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Presidential Documents

Title 3—

The President

Proclamation 6213 of October 24, 1990

National Domestic Violence Awareness Month, 1990

By the President of the United States of America

A Proclamation

For most Americans, home is, as it should be, a beloved place of refuge, a place where one can enjoy the unconditional love and acceptance of his or her family as well as physical comfort and security. Tragically, however, for far too many of our citizens the blessings of home and family are marred by domestic violence.

Each year, hundreds of thousands of Americans—people of every age, gender, and race, and from every social, religious, and economic background—are affected by domestic violence. Domestic violence is not just a series of angry exchanges or the kind of simple quarrels that occur occasionally in almost every family. Rather, it is a grave pattern of destructive behavior and a serious crime problem that inflicts untold harm upon individuals and families and weakens the very fabric of our society.

Domestic violence involves not only spouses, but also some of our Nation's most vulnerable citizens. Its victims include abused and neglected children, elderly relatives, and persons with disabilities. In every case, domestic violence leaves deep physical and emotional scars, often haunting for years the children who suffer or simply witness its terrifying effects. All too often, domestic violence results in death.

Fortunately, Americans throughout both the public and private sectors are working to assist the victims of domestic violence and to stop the vicious cycle of abuse and despair. Law enforcement officials at the Federal, State, and local level, health care providers, members of private voluntary organizations, the clergy, and other concerned citizens are engaged in efforts to prevent domestic violence and to provide shelter and counseling for its victims. Many communities now have special outreach programs and residential services for affected individuals and families.

This month we recognize the generosity, compassion, and hard work of all those volunteers and professionals who are working to prevent domestic violence and to help its victims. We also reaffirm our support for their vital efforts.

The Congress, by House Joint Resolution 602, has designated October 1990 as "National Domestic Violence Awareness Month" and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 1990 as National Domestic Violence Awareness Month. I urge all Americans to observe this month by learning more about the tragedy of domestic violence and how each of us can help bring an end to it.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of October, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-25527
Filed 10-24-90; 2:22 pm]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1005

[DA-90-031]

Milk in the Carolina Marketing Area; Temporary Revision of Pool Distributing Plant Route Disposition Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rules.

SUMMARY: This action decreases temporarily the route disposition requirements applicable to a pool distributing plant under the Carolina milk order. For the months of October and November 1990 and January and February 1991, the percentage of route disposition by a pool distributing plant is decreased from 60 percent to 50 percent. The action was requested by a cooperative association and a proprietary handler. The revision, as indicated by proponents, would avoid some additional costs in pooling milk at one of two distributing plants operated by the handler.

EFFECTIVE DATE: October 1, 1990 through February 28, 1991.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456 (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of proposed Temporary Revision of Pool Distributing Plant Route Disposition Requirements: Issued September 18, 1990; published September 24, 1990 (55 FR 39002).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action eliminates the need to make uneconomic shipments of milk to meet the pooling standards of the order.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of § 1005.7(a)(2) of the order.

Notice of proposed rulemaking was published in the Federal Register (55 FR 39002) concerning a proposed decrease in the route disposition percentages for a pool distributing plant for the months of September through November 1990 and January and February 1991. The public was offered the opportunity to comment on the proposal by submitting written data, views and arguments by October 1, 1990. One comment was received in support of the revision. No comments were received in opposition to the revision.

Statement of Consideration

This action decreases the Carolina milk order's route disposition percentages for a pool distributing plant for the months of October and November 1990 and January and February 1991. The revision decreases for such months the distributing plant route disposition requirements from 60 percent to 50 percent.

Southern Milk Sales, Inc. and Hunter Jersey Farms, Inc. (Hunter Jersey) requested the action. The proponents indicated that Hunter Jersey operates two distributing plants located in the marketing area. One of the two plants is expected to have about 50 percent route disposition and the other plant is expected to have about 86 percent route disposition. The combined route disposition of the two plants would be about 72 percent.

Proponents also requested that the order be amended to permit any handler that operates two or more distributing plants to combine the receipts and utilization of milk and milk products at such plants for reporting purposes. Pending the completion of such amendatory proceeding, proponents have requested that the Director of the Dairy Division lower the 60 percent route disposition standard by 10 percent points.

Unless this action is granted, Hunter Jersey would have to incur additional costs in order to pool the milk received at the plant having about 50 percent route disposition. The other alternative would be to not pool the plant which would result in a reduction in income for the dairy farmers supplying such plant.

Interested parties were provided 7 days after publication of the proposed temporary revision for submitting written comments. The Carolina-Virginia Milk Producers Association filed comments in support of the temporary revision. No comments in opposition to the proposed action were filed.

The time needed to complete the revision procedures, however, does not permit the inclusion of the month of September in this action. It is appropriate under the circumstances, therefore, to relax the aforementioned provision of § 1005.7(a)(2) for the months of October and November 1990 and January and February 1991. A reduction of the route disposition percentage to 50 percent for this period should avoid the additional expense that a handler would otherwise incur in meeting the pooling requirements of the order.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision.

Therefore, good cause exists for making this temporary revision effective October 1, 1990 through February 28, 1991.

List of Subjects in 7 CFR Part 1005

Milk marketing orders.

It is therefore ordered, that the following provision of § 1005.7(a)(2) is hereby revised for the months of October and November 1990 and January and February 1991.

PART 1005—MILK IN THE CAROLINA MARKETING AREA

1. The authority for 7 CFR part 1005 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

§ 1005.7 [Amended]

2. In § 1005.7(a)(2) the provision "60 percent" is revised to "50 percent" for the months of October and November 1990 and January and February 1991.

Signed at Washington, DC, on: October 22, 1990.

W. H. Blanchard,

Director, Dairy Division.

[FR Doc. 90–25315 Filed 10–25–90; 8:45 am]

BILLING CODE 3410-02-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

Organization and Operations of Federal Credit Union; Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This action implements section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") by adding new §§ 701.14 and 741.8 to NCUA's Regulations. These sections require that federally insured insured credit unions within specified categories file a notice with NCUA prior to adding or replacing a member of the board of directors, committee member or senior executive officer. NCUA may disapprove any change that it determines not to be in the best interests of the members of the credit union or the public.

EFFECTIVE DATE: November 26, 1990.

ADDRESSES: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Staff Attorney, Office of General Counsel, at the above address or telephone: (202) 682–9630.

SUPPLEMENTARY INFORMATION:

A. Background

FIRREA amended the Federal Credit Union Act (FCU Act) by adding a new section 212 (12 U.S.C. 1791). Section 212 requires that an insured credit union that has been chartered less than 2 years or is in troubled condition notify NCUA at least 30 days prior to the addition of any individual to the board of directors or a committee or the employment of any individual as a senior executive officer. If NCUA issues a Notice of Disapproval, the insured credit union is prohibited from making the change. To implement section 212, NCUA is adding §§ 701.14 and 741.8 to its regualtions. These sections define key terms and establish notice and application requirements. As mandated by FIRREA, the requirements apply to all federally insured credit unions.

In a separate action, NCUA is issuing a final regulation establishing the appeal process for those cases where the proposed addition or change in directors, committee members or senior employees is disapproved. That regulation is being published in the **Federal Register** simultaneously with this action and will be contained in part 747 of the NCUA Rules and Regulations (12 CFR part 747).

B. Comments

The NCUA Board issued a proposed rule on March 20, 1990 (55 FR 12852, 4/6/90)). Fifty comments were received. Thirty of the commenters were federal credit unions and nine were state-chartered credit unions. Four commenters were state credit union leagues and three were national credit union trade associations. Two comments were received from state regulatory agencies. Comments were also received from a law firm and a banker's trade association. As many commenters favored the proposed rule as opposed it, with most commenters recommending at least one change in the final regulation.

C. Discussion

Troubled Credit Union

Section 212(f) of the FCU Act as added by FIRREA directs the NCUA Board to prescribe by regulation a definition of "troubled credit union." The definition is found in § 701.14(b)(3) of the final rule. The proposed definition included all credit unions assigned a composite rating of 4 or 5 under the CAMEL Rating System by the NCUA or the state supervisor; all credit unions subject to adinistrative action proceedings as outlined in section 206 of the FCU Act (12 U.S.C. 1786) or similar action by the appropriate state supervisory authority; credit unions which had been granted assistance as outlined under section 116 or 208 of the FCU Act (12 U.S.C. 1762 or 1788); and credit unions that were informed in writing, based on an examination, supervisory contract, or insurance review that they had been designated as in a "troubled condition" for purposes of this regulation. A credit union receiving a Letter of Understanding and Agreement ("LUA") based on safety and soundness concerns was also included. Few commenters approved of the definition in the proposed rule. A number of commenters found the definition to be unnecessarily broad and subjective.

Six commenters objected to the inclusion of all credit unions subject to an LUA. These commenters argue that if a credit union has received an LUA and is taking appropriate steps to satisfy the requirements set forth in the LUA, then it need not be included in the definition. The NCUA Board agrees and has removed this provision from the final rule.

Three commenters argued that NCUA sending a letter to a credit union based on supervisory contact, examination, or insurance review should not automatically place the credit union in the "troubled condition" category without an investigation into the accuracy of such claims. The NCUA Board agrees that this aspect of the proposal has some potential for administrative misues. Further, other provisions of this definition will generally cover any credit union in troubled condition. Accordingly, this provision is not included in the final rule.

One Commenter objected to including within the definition a credit union granted assistance pursuant to section 116 of the the FCU Act, that is, a credit union receiving a decrease or waiver of its usual reserve transfer requirement. The Board continues to be lieve that a credit union that is not able to meet the normal statutory reserve transfer requirements expected of a healthy credit union must be considered a troubled credit union for purposes of section 212 and hence those credit unions remain within the definition.

Another commenter did not believe that a credit union should fall within the definition solely because it is involved in an administrative action proceeding pursuant to section 206 of the FCU Act. The Board agrees that administrative action, depending on the facts and nature of a given case, may have little or nothing to do with the financial health of the credit union, and that in those cases

were the credit union is in troubled financial condition, the definition will be triggered under its other provisions. Accordingly, credit unions involved in section 206 proceedings are not included in the final rule.

Four commenters objected to including credit unions that have been chartered less than 2 years within the definition. The thrust of this argument is that if there are no problems in the credit union that threaten safety and soundness, the credit union should be allowed to function normally. Those commenters apparently have overlooked the fact that FIRREA mandates that credit unions chartered for less than two years be included in the notice provisions.

In summary, the definition of troubled credit union has been narrowed in the final rule, and covers those specific, and readily identifiable cases necessary to meet the statutory mandate. The definition is limited to those credit unions assigned a Code 4 or 5 CAMEL rating or those that have been granted assistance under section 116 (reserve transfer) or 208 (National Credit Union Share Insurance Fund (NCUSIF) financial assistance) of the FCU Act (12 U.S.C. 1762 and 1788). The Board believes this definition is consistent with the intent of section 212 of the FCU Act added by FIRREA and at the same time appropriately limits the number of cases where NCUA review and approval is required, thus reducing associated costs and administrative burdens. A broad definition is not necessary because, unlike other financial institutions, the management of a credit union is elected by its member/owners, and thus it is not possible for outsiders to purchase control of, and abuse, a troubled institution.

Senior Executive Officer

Section 212(f) of the amended FCU Act directs the NCUA Board to define "senior executive officer." The definition is found in § 701.14(b)(2) of the final rule. In the proposed rule, the definition included any individual who exercised significant influence over, or participated in, major policy-making decisions of an insured credit union, without regard to title, salary, or compensation. Certain positions, listed in generic form, were automatically covered. Included were senior executive officer (president/manager/treasurer), assistant senior executive officer (vice-president/assistant manager/assistant treasurer) and chief financial officer. The term "senior executive officer" also included employees of an entity, such as a consulting firm, hired to perform the functions of positions covered by the regulation. Eight commenters suggested a change in this definition. Most of these commenters suggested that the definition was overinclusive. Some commenters would not include individuals holding the positions of vice president or assistant manager within the definition because the individuals holding these positions, in their view, do not have significant influence on the actions of credit unions. The NCUA Board disagrees. By definition, a vice president or assistant manager holds a senior position, ranking immediately below the president or manager, serves as a deputy or assistant in carrying out management functions, and is empowered, among other things, to assume the duties of president or manager in that individual's absence. The Board believes the intent of FIRREA requires the inclusion of these positions.

Three commenters objected to including outside employees of a credit union, such as a consulting firm. These commenters believe that including individuals who have the status of independent contractors in the definition is inappropriate because they are outside the scope of section 212. The NCUA Board believes such individuals should be included since they can make management decisions. It should be noted that such outside employees are included only to the extent that they perform functions of a senior executive officer. Where that is the case, the Board believes their inclusion is required to fulfill the Congressional intent of section 212.

The NCUA Board does not believe that the proposed definition of "senior executive officer" was overinclusive. However, for the sake of clarity and consistency, the definition has been reworded so it conforms to similar definitions of "senior management employee" located elsewhere in NCUA's Rules and Regulations. (*See*, e.g., §§ 701.21(c)(8) and 721.2(c), 12 CFR 701.21(c)(8) and 721.2(c).)

Laterals and Transfers

The NCUA Board requested comment on whether section 212's notice requirement should include promotions and lateral transfers to senior positions. Two commenters believed they should be included. Four commenters recommended they be excluded. Inasmuch as a promotion or lateral transfer results in a new individual filling the affected senior executive position, the Board has concluded that the change constitutes "employment" within the meaning of section 212, of a new individual with respect to that position, and the notice requirement should be triggered. With respect to section 212's coverage of the "proposed addition of any individual to the board of directors," the rule covers not only increases in board membership, but also replacement of board members and the filling of vacancies on the board.

Notification

Section 212(a) requires that the credit unions provide NCUA at least 30 days advance notice of any management change covered by the rule. Section 212(c) provides for NCUA waiver of the advance notice requirement under certain circumstances. These provisions are implemented by § 701.14(d) of the final rule. Final § 701.14(d) is substantially unchanged from the proposal. Some additional changes have been made, including the addition of language in § 701.14(d)(2) clarifying that, in those cases where prior notice is waived, NCUA may, in its discretion, require notice at the time of or after the individual's assumption of office, and that in those cases, the right of disapproval runs for 30 days after receipt of the notice.

Nine commenters disagreed with the 30-day decision period of the proposed rule. These commenters argue that this decision period is excessive and will make it difficult for credit unions to attract good people because many qualified people may be unwilling to be kept in limbo for 30 days while NCUA reviews their character. These commenters apparently overlooked the fact that section 212 of the Act mandates the 30-day decision period. In any event, these commenters' concerns should be mitigated by the fact that, under § 701.14(e) of the proposed and final rules, an individual may commence service while waiting for NCUA's decision.

The proposed rule stated that prior notice would not be required when directors are elected at members' meetings, but that information on newly elected directors would have to be submitted to NCUA within 48 hours of the election. NCUA asked for comment on how to address the situation where the NCUA Board disapproves of an elected candidate.

Four commenters recommended that the board of directors of the credit union appoint its own alternate director to serve until the next annual meeting, contingent upon subsequent NCUA approval. The NCUA Board agrees with this recommendation and has incorporated it into the final rule. This procedure is consistent with the authority of the board of directors to fill a vacancy on the board. (See section

111(a) of FCU Act, 12 U.S.C. 1761(a).) The Board has also added the same procedure for elected credit committee members since federal credit unions have the option of either an elected or appointed credit committee.

State Involvement

Nine commenters requested the involvement of the state regulator in the approval process. Most of these commenters believe that state officials are generally more familiar with the details and personalities in state chargered credit unions. Commenters also suggested consultation between the state regulator and the NCUA Regional Director before issuing a notice of disapproval or approval. The NCUA Board agrees and has incorporated into the final rule a requirement that the prior notification be sent by federally insured state chartered credit unions concurrently to the state regulator and to NCUA. NCUA will consult with the appropriate state supervisor before issuing a notice of approval or disapproval.

Regulatory Flexibility Analysis

The NCUA Board hereby certifies that this regulation does not have a significant impact on a substantial number of small credit unions because the rule applies only to newly chartered and troubled credit unions. Federally insured credit unions will only be required to report if changes in officials or senior executives occur. Accordingly, the NCUA Board has determined that a Regulatory Analysis is not required.

Executive Order 12612

This regulation will apply to all federally insured credit unions. The NCUA Board, pursuant to Executive Order 12612, has determined that the final amendment may have a direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. However, FIRREA requires that this regulation apply to all federally insured credit unions. To mitigate any adverse effects, the final rule contains provisions mandating that required notices be submitted by federally insured state chartered credit unions to the state regulator as well as NCUA.

Paperwork Reduction Act

The Office of Management and Budget has approved the collection requirements contained in § 701.14 of NCUA's Regulations (OMB No. 3133–0035) relating to the notice of change of officials and senior executive staff.

List of Subjects in 12 CFR Parts 701 and 741

Troubled credit unions, Senior executive officials, Notice of disapprovals, and Prior notice requirements.

By the National Credit Union Administration Board on October 19, 1990.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends its regulations as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and Pub. L. 101–73, Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq., 42 U.S.C. 1861 and 42 U.S.C. 3601–3610.

2. Section 701.14 is added to read as follows:

§ 701.14 Change in official or senior executive officer in credit unions that are newly chartered or are in troubled condition.

(a) *Statement of scope and purpose.* Section 212 of the Federal Credit Union Act (12 U.S.C. 1791) sets forth conditions under which a credit union must notify NCUA in writing of any proposed changes in its board of directors, committee members or senior executive staff. The regulation only applies in cases of newly chartered credit unions and credit unions in troubled condition.

(b) *Definitions.* For the purposes of this section:

(1) *Committee member* means any individual who serves as an official of the credit union in the capacity of a credit committee member or supervisory committee member.

(2) *Senior executive officer* means a credit union's chief executive officer (typically this individual holds the title of president or treasurer/manager), any assistant chief executive officer (e.g., any assistant president, any vice president or any assistant treasurer/manager) and the chief financial officer (controller). The term "senior executive officer" also includes employees of an entity, such as a consulting firm, hired to perform the functions of positions covered by the regulation.

(3) *Troubled condition* means any insured credit union that has one or a combination of the following conditions:

(i) Has been assigned

(A) A 4 or 5 Camel composite rating by the NCUA in the case of a federal credit union, or

(B) An equivalent 4 or 5 Camel composite rating by the state supervisor in the case of a federally insured, state-chartered credit union, or

(C) A 4 or 5 Camel composite rating by NCUA based on core workpapers received from the state supervisor in the case of a federally insured, state-chartered credit union in a state that does ot use the Camel system. In this case, the state supervisor will be notified in writing by the Regional Director in the Region in which the credit union is located that the credit union has been designated by NCUA as a troubled institution;

(ii) Has been granted assistance as outlined under sections 116 or 208 of the Federal Credit Union Act.

(c) *Prior notice requirement.* An insured credit union shall give NCUA written notice at least 30 days prior to the effective date of any addition or replacement of a member of the board of directors or committee member or the employment or change in responsibilities of any individual to a position as a senior executive officer if:

(1) The credit union has been chartered for less than 2 years; or

(2) The credit union meets the definition of troubled condition as set forth in paragraph 701.14(b)(3).

(d) *Procedures for notice of proposed change in official or senior executive officer.* (1) Filing and acceptance. Notices shall be filed with the appropriate Regional Director. State-chartered federally insured credit unions shall also file a copy of the notice with their state supervisor. The notice shall contain information pertaining to the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted, subject to the authority of the Regional Director or his or her designee to require additional information. The information submitted must include the identity, personal history, business background, and experience of the individual, including material business activities and affiliations during the past 5 years, and a description of any material pending legal or administrative proceedings in which the individual is a party and any criminal indictment or conviction of such person by a state or Federal court. Each individual on whose behalf the notice is filed must attest to the validity of the information filed. At the option of the individual, the information may be forwarded to the Regional Director by the individual; however, in such cases, the credit union

must file a notice to that effect. The credit union submitting the notice shall be notified in writing of the date on which all required information is received and the notice is accepted for processing. Before the end of the 30-day period beginning on the date NCUA accepts the information for processing, the Regional Director will issue a written notice to the individual and the credit union of disapproval or approval of the proposed official or employee. If, after the 30-day period has ended, the individual has not been informed in writing of NCUA's disposition, the individual shall be considered approved.

(2) Waiver of prior notice requirement. Parties may petition the appropriate Regional Director for a waiver of the prior notice required under this section. Waiver may be granted if it is found that delay could harm the credit union or the public interest. Any waiver shall not affect the authority of NCUA to issue a Notice of Disapproval within 30 days of the waiver, or within 30 days of any subsequent required notice.

(3) Election of directors or credit committee members. (i) In the case of the election of a new member of the board of directors or credit committee member at a meeting of the members of a federally insured credit union, prior notice is not required. However, a completed notice must be filed with the appropriate Regional Director within 48 hours of the election.

(ii) If a director or credit committee member is disapproved by NCUA, the board of directors of the credit union may appoint its own alternate, to serve until the next annual meeting, contingent upon NCUA approval.

(e) *Commencement of service.* A proposed director, committee member or senior executive officer may begin to serve temporarily until the credit union and the individual are notified in writing of NCUA's approval or disapproval of the proposed addition or employment.

(f) *Notice of disapproval.* NCUA may disapprove the individual's serving as a director, committee member or senior executive officer if it finds that the competence, experience, character, or integrity of the individual with respect to whom a notice under this section is submitted indicates that it would not be in the best interests of the members of the credit union or of the public to permit the individual to be employed by, or associated with, the credit union. The Notice of Disapproval will advise the parties of their rights of appeal pursuant to part 747 subpart L, of NCUA's Regulations (12 CFR 747.1201 et seq.).

PART 741—[AMENDED]

1. Part 741, Requirements for Insurance, is amended as follows:

2. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1781 through 1790, and Pub. L. 101–73. Section 741.9 is also authorized by 31 U.S.C. 3717.

§§ 741.8–741.12 [Redesignated as §§ 741.9–741.13]

3. Sections 741.8, 741.9, 741.10, 741.11 and 741.12 are redesignated as §§ 741.9, 741.10, 741.11, 741.12 and 741.13, respectively.

4. A new § 741.8 is added to read as follows:

§ 741.8 Reporting requirements for credit unions that are newly chartered or in troubled condition.

Any federally insured credit union chartered for less than 2 years or any credit union defined to be in troubled condition as set forth in § 701.14(b)(3) must adhere to the requirements stated in § 701.14(c) concerning the prior notice and NCUA review. Credit unions must submit required information to both the appropriate NCUA Regional Director and their state supervisor. NCUA will consult with the state supervisor before making its determination pursuant to § 701.14(d)(2) and (f). NCUA will notify the state supervisor of its approval/disapproval no later than the time that it notifies the affected individual pursuant to § 701.14(d)(1).

[FR Doc. 90–25383 Filed 10–25–90; 8:45 am]
BILLING CODE 7535–01–M

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12 CFR Part 741

Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).
ACTION: Final amendment.

SUMMARY: A limited number of states authorize state-chartered credit unions to offer "uninsured membership shares." These shares are at risk to the member in the event of liquidation of the credit union. The purpose of this final amendment is to provide that, as a condition of federal share insurance, federally insured state-chartered credit unions may not offer these uninsured shares. This amendment will only affect a small number of credit unions.

EFFECTIVE DATE: November 26, 1990.
ADDRESSES: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.
FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Office of General Counsel, at the above address or telephone: (202) 682–9630.
SUPPLEMENTARY INFORMATION

A. Background

In general, the aggregate of a member's individual share accounts in a federally insured credit union is insured up to $100,000 by the National Credit Union Share Insurance Fund (NCUSIF). There may be as many as thirteen state statutes, however, that authorize state-chartered credit unions to have uninsured membership shares. The amount of a member's uninsured share may be as little as a few dollars or as much as several thousand dollars, depending on state law and the policies of the individual credit union. In any case, a situation is presented where, even though the member may have significantly less than $100,000 in his combined individual share accounts, an initial amount of the member's funds is not insured.

The NCUA has a number of concerns with uninsured membership shares:

—Section 207(k)(1) of the FCU Act (12 U.S.C. 1787(k)(1)) states in part that "the term 'insured account' means the total amount of the account in the member's name (after deducting offsets) less any part thereof which is in excess of $100,000" and that "in determining the amount due any member, there shall be added together all accounts maintained by him * * *." Thus, the FCU Act does not appear to contemplate uninsured membership shares; rather, it indicates an intent to provide insurance coverage on all of the first $100,000. This is consistent with the purpose of share insurance; to protect the average saver.

—Federally insured credit unions are required to place an official sign, regarding federal insurance coverage up to $100,000, at all branches and at all teller stations or windows where insured shares are received (see 12 CFR 740.3). Also, many credit unions routinely advertise federal insurance coverage up to $100,000. NCUA is concerned that if federally insured credit unions require or offer uninsured membership shares, confusion will inevitably result, even where good faith efforts are made to disclose the uninsured status of the account. The failure of a credit union offering these accounts is likely to result in substantial adverse public reaction, litigation, and potentially increased liability to the National Credit Union Share Insurance Fund.

—There appears to be no effective and coherent plan, on the part of some

credit unions offering or planning to offer these accounts, to deal with losses that must be absorbed by uninsured shares. Important questions are not addressed, including whether other capital accounts are used first to absorb losses, what type of notice is to be provided to members, whether the member is obligated to replenish the shares, and whether the credit union is obligated at any point to restore amounts used to absorb losses.

—Proponents of the uninsured membership share concept argue that these shares serve as an additional source of capital to support more rapid asset growth and to enable credit unions to fund new programs and services. While NCUA encourages sound levels of asset growth, it is concerned with the potential for the use of uninsured share to support excessive rates of growth. It is noted that federal credit unions, and the vast majority of state-chartered credit unions, continue to successfully use the traditional method of building capital, *i.e.*, setting aside earnings to both support reasonable rates of asset growth and improve overall capital levels.

B. Comments

The NCUA Board published a proposed rule prohibiting uninsured membership shares on May 3, 1990, with a sixty-day comment period (*see* 55 FR 18613). Forty comments were received. Fifteen of the commenters were state-chatered credit unions and ten were federal credit unions. Six of the commenters were credit union leagues and six were state agencies. Three comments were received from national credit union trade associations.

C. Discussion

The commenters were split on the desirability of the proposed amendment. Most of the commenters supporting the prohibition cited NCUA's concerns set forth in the proposed rule and noted above as the basis of their position, with a number of commenters specifically stating that uninsured membership shares will lead to significant confusion among members concerning insurance coverage. A number of commenters believe that the practice is inherently unsafe and unsound.

Half of the commenters disagreed with the proposed rule. Ten commenters stated that uninsured membership shares are a necessary mechanism to accumulate capital. Six commenters disapproved of a blanket prohibition on uninsured membership shares but recommended allowing uninsured membership shares with a limit placed on the amount of share, typically somewhere between $100.00 and $200.00.

Six commenters believe that NCUA has no authority to prohibit uninsured membership shares in state-chartered credit unions. They stated that section 201(b)(7) of the FCU Act requires an agreement from credit unions applying for NCUSIF insurance "not to issue or have outstanding any account * * * the form of which, by regulation or in special cases, has not been approved by the Board except for accounts authorized by State law for State credit unions." These commenters believe that this language expressly permits the states to determine which member accounts are permissible for federally insured state-chartered credit unions.

The NCUA Board disagrees with the commenters' analysis. The Board believes that the commenters are misconstruing section 201(b)(7) of the FCU Act. The fact that a credit union does not have to receive approval by the NCUA Board for state-authorized accounts does not mean that if the practice is unsafe and unsound, the NCUA Board may not prohibit the account as a condition of insurance. Any other interpretation could lead to absurd results. It would allow the states to permit any type of account, without regard to risk to the Share Insurance Fund.

Twelve commenters disagreed with NCUA's reasoning that confusion may arise among members about the uninsured status of uninsured membership shares which may cause adverse public reaction and litigation and could be a threat to the NCUSIF if a credit union offering these accounts failed. These commenters believe that concerns in this area could be adequately addressed by regulation of uninsured shares. In regard to increased liability to the NCUSIF, these commenters believe that, because the shares are uninsured, the only risk would come from inadequate disclosure, which NCUA can regulate. Numerous commenters agreeing with the proposed regulations cited the disclosure problem as the primary reason for their support of the prohibition.

Nine commenters disagreed with NCUA's concern that there is no coherent plan by credit unions offering or planning to offer uninsured membership shares for dealing with losses on these types of accounts. The commenters believe that NCUA can promulgate regulations to create an effective and coherent plan concerning how to deal with losses that must be absorbed by uninsured membership shares.

Although NCUA could regulate this area, the NCUA Board's belief that this type of activity presents potential safety and soundness problems dissuades the Board at this time from encouraging the development of uninsured membership share through the regulation of disclosure requirements and plans for losses.

Ten commenters disagreed with NCUA's concern that the traditional mechanisms for raising capital are adequate and that uninsured membership shares may be used to support excessive growth. The commenters believe that these accounts will serve as additional capital to absorb investment, loan and/or operating losses. They believe any concern about unhealthy asset growth can be handled by regulation. While it might be possible to reduce this concern though regulation, variances in state laws concerning uninsured membership shares make the adoption of a uniform system of regulation by NCUA impractical, and the Board continues to believe that any benefits of such action are outweighted at this time by the concerns expressed in the Background discussion above. The Board has adoted the proposed amendment in final form without modification.

Regulatory Requirements

Paperwork Reduction Act

The proposed amendment does not contain any paperwork requirements.

Regulatory Flexibility Act

The NCUA Board has determined and certifies that the proposed amendment will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Executive Order 12612; Effect on the States and State-Chartered Credit Unions

The NCUA Board is aware of only four federally insured state-chartered credit unions that currently offer uninsured membership shares. Under the rule, those credit unions should coordinate with their appropriate Regional Director to either pay out the uninsured shares or convert them to insured shares status. Although the amendment does restrict federally insured state-chartered credit unions from implementing authority granted under state law, the NCUA believes that the protection of the NCUSIF warrants the prohibition. Since the number of

affected credit unions is minimal, the amendment will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 12 CFR Part 741

Credit unions, Uninsured member shares.

By the National Credit Union Administration Board on October 19, 1990.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends its regulations as follows:

PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 is revised to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1781 through 1790 and Public Law 101–73. Section 741.11 also issued under 31 U.S.C. 3717.

2. A new § 741.14 is added to read as follows:

§ 741.14 Uninsured membership shares.

Any credit union that is insured pursuant to title II of the Act may not offer membership shares that, due to the terms and conditions of the account, are not eligible for insurance coverage. This prohibition does not apply to shares that are uninsured solely because the amount is in excess of the maximum insurance coverage provided pursuant to part 745.

[FR Doc. 90–25385 Filed 10–25–90; 8:45 am]

BILLING CODE 7535–01–M

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12 CFR Part 747

Rules of Practice and Procedure

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is adding a new subpart L to part 747 of its Regulations. Along with new §§ 701.14 and 741.18, issued concurrently with this action, subpart L implements recent amendments to the Federal Credit Union Act requiring prior notice and NCUA approval of senior management changes in certain federally insured credit unions.

DATES: November 26, 1990.

ADDRESSES: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Michael J. Mckenna, Staff Attorney, Office of General Counsel, at the above address or telephone: (202) 682–9630.

SUPPLEMENTARY INFORMATION:

A. Background

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) amended the FCU Act by adding a new section 212 (12 U.S.C. 1791). Section 212 requires specified categories of federally insured credit unions to furnish NCUA with a least 30 days' notice before adding any individual to the board of directors or credit or supervisory committees or employing and individual as a senior exectuve officer. A federally insured credit union is covered by the notice requirement if the credit union: (1) Has been chartered less than 2 years, or (2) is otherwise is a "troubled condition," as defined in § 701.14 of NCUA's Regulations. Section 212 also prohibits the credit union from adding the individual to the board or committee, or employing the individual as a senior executive officer, if NCUA issues a Notice of Disapproval. NCUA is adding subpart L to part 747 of its Regulations to set forth the rights that an individual or a credit union may exercise and procedures which must be followed when NCUA issues a Notice of Disapproval pursuant to section 212 of the FCU Act.

B. Comments

The NCUA Board issued a proposed rule on March 20, 1990 (55 FR 12855, 4/6/90). Fifty comments were received. Thirty of the commenters were federal credit unions. Four commenters were state credit union leagues and three were national credit union trade associations. Two comments were received from state regulatory agencies. Comments were also received from a law firm and a banker's trade association. As many commenters favored the proposed rule as opposed it, with most commenters recommending at least one change in the final regulation.

A number of commenter found the time frame set forth in the proposed rule excessive and potentially unworkable. Other commenters found the substance of the notice and appeal provisions confusing.

Having considered these comments, and after further staff review, the Board has made substantial revisions in order to clarify the final rule.

C. Section-by-Section Discussion

Section 747.1201 sets forth the scope of subpart L. It is substantially the same as in the proposed rule. Reference has been added to the credit and supervisory committees in order to clarify that the rule does not apply to other internal committees of the credit union.

Section 747.1202 sets forth criteria the NCUA Board or its designee will use to issue a Notice of Disapproval, i.e., that the individual's competence, experience, character, or integrity indicate that it would not be in the best interest of the members of the credit union or of the public to permit the individual to be associated with the credit union. The two subsections of the proposed rule have been combined, with no change in substance.

Section 747.1203 sets forth procedures to be followed where a Notice of Disapproval is issued. This section provides that the notice will be served on the credit union and the individual and describes the required content of the Notice. This section has been revised to clarify that, prior to deciding whether to appeal to the NCUA Board, the individual and the credit union may request the Regional Director's reconsideration. This information will be contained in the Notice of Disapproval.

Section 747.1204 sets forth procedures for an appeal to the NCUA Board or its designee of a disapproval by the Regional Director. This section provides that, within 15 days after receipt of a Notice of Disapproval or a denial of a request for reconsideration, the individual or credit union may submit an appeal to the NCUA Board. The section states that the appeal shall be in writing and describes the required contents of the appeal. Appeals will be decided by the board within 90 days of receipt of all required information. The section replaces §§ 747.1204 and 747.1205 of the proposed rule, which had proposed oral hearing procedures for appeals. The Board has determined, based on considerations of time, costs, and agency resources, that appeals on the written record are preferable to oral hearings.

New § 747.1205(a) of subpart L provides that a failure to file an Appeal, either to the initial determination or a decision on a request for reconsideration, is a failure to exhaust administrative remedies and the determination or decision will be deemed to have been accepted by, and binding upon, the individual or credit union. Section 747.1205(b) sets forth those jurisdictions where a petitioner may seek judicial review.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that the final rule will not have a significant impact on a substantial number of small credit unions. The rule sets forth procedures for the handling of statutorily mandated review of changes in officials and senior executive staff and applies only to newly chartered or troubled credit unions. Accordingly, the NCUA Board has determined that a Regulatory Analysis is not required.

Executive Order 12612

This regulation will apply to all federally insured credit unions. The NCUA Board, pursuant to Executive Order 12612, has determined that the final amendment may have a direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. However, FIRREA requires that this regulation apply to all federally insured credit unions.

Paperwork Reduction Act

The Office of Management and Budget has approved the collection requirement contained in part 747, subpart L, of NCUA's Rules and Regulations (OMB No. 3133–0035) which sets forth the rights that an individual or a credit union may exercise and procedures which must be followed when NCUA issues a Notice of Disapproval pursuant to section 212 of the FCU Act.

List of Subjects in 12 CFR Part 747

Administrative practice and procedure, Credit unions.

By the National Credit Union Administration Board on October 19, 1990.

Becky Baker,

Secretary of the NCUA Board.

Accordingly, NCUA amends its regulations in 12 CFR chapter VII, part 747, to read as follows:

PART 747—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 747 is revised to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1786, 12 U.S.C. 1784, 12 U.S.C. 1787, 12 U.S.C. 1791, 12 U.S.C. 1795c.

2. A new subpart L consisting of §§ 747.1201 through 747.1205, is added to read as follows:

Subpart L—Procedures and Standards Applicable to a Notice of Change in Senior Executive Officers, Directors or Committee Members Pursuant to Section 212 of the Act

Sec.

§ 747.1201 Scope.

The rules and procedures set forth in this subpart shall apply to the notice filed by a credit union pursuant to section 212 of the FCU Act, 12 U.S.C. 1791, and § 701.14 of the Rules and Regulations, for the consent of NCUA to add to or replace an individual on the board of directors or supervisory or credit committee, or to employ any individual as a senior executive officer or change the responsibilities of any individual to a position of senior executive officer where the credit union:

(a) Has been chartered less than 2 years; or

(b) Is in "troubled condition," as defined in § 701.14.

§ 747.1202 Grounds for disapproval of notice.

The NCUA Board or its designee may issue a notice of disapproval with respect to a notice submitted by a credit union pursuant to section 212 of the FCU Act and § 701.14 of the Rules and Regulations, where the competence, experience, character, or integrity of the individual with respect to whom such notice is submitted indicates that it would not be in the best interest of the members of the credit union or the public to permit the individual to be employed by, or associated with, such credit union.

§ 747.1203 Procedures where Notice of Disapproval issued; reconsideration.

(a) The Notice of Disapproval shall be served upon the federally insured credit union and the candidate for director, committee member or senior executive officer. The Notice of Disapproval shall:

(1) Summarize or cite the relevant consideration specified in § 747.1202;

(2) Inform the individual and the credit union that, within 15 days of receipt of the Notice of Disapproval, they can request a reconsideration from the regional director of the initial determination or appeal the determination directly to the NCUA Board;

(3) Specify what additional information, if any, must be contained in the reconsideration.

(b) The request for reconsideration must be filed at the appropriate Regional Office.

(c) The Regional Directors shall act on a request for reconsideration within 30 days of its receipt.

§ 747.1204 Appeal.

(a) *Time for filing.* Within 15 days after issuance of a Notice of Disapproval or a determination on a request for reconsideration by the Regional Director, the individual or credit union (henceforth petitioner) may appeal by filing with the Board a written request for appeal.

(b) *Contents of request.* Any appeal must be in writing and include:

(1) The reasons why NCUA should review its disapproval; and

(2) Relevant, substantive and material documents that for good cause were not previously set forth in the notice required to be filed pursuant to section 212 of the FCU Act and § 701.14 of the Rules and Regulations.

(c) *Procedures for review of request.* Within 30 days of the Board's receipt of an appeal, the Board may request in writing that the petitioner submit additional facts and records to support the appeal. The petitioner shall have 15 days from the date of issuance of such written request to provide such additional information. Failure by the petitioner to provide additional information may, as determined solely by the Board or its designee, result in denial of the petitioner's appeal.

(d) *Determination on appeal by NCUA Board or its designee.* (1) Within 90 days from the date of the receipt of an appeal by the NCUA Board or its designee or of its receipt of additional information requested under paragraph (c) of this section, the NCUA Board or its designee shall notify the petitioner whether the disapproval will be continued, terminated, or otherwise modified. The NCUA Board or its designee shall promptly rescind or modify the Notice of Disapproval where the decision is favorable to the petitioner.

(2) The determination by the Board on the appeal shall be provided to the petitioner in writing, stating the basis for any decision of the NCUA Board or its designee that is adverse to the petitioner, and shall constitute a final Agency order.

(3) Failure by the Board to issue a determination on the petitioner's appeal within the 90-day period provided for under this paragraph (d)(1) shall be deemed a denial of the appeal for purposes of § 747.1205.

§ 747.1205 Judicial review.

(a) Failure to file an appeal within the applicable time periods, either to the initial determination or to the decision on a request for reconsideration, shall constitute a failure by the petitioner to exhaust available administrative remedies and, due to such failure, any objections to the initial determination or request for reconsideration shall be deemed to be waived and such determination shall be deemed to have been accepted by, and binding upon, the petitioner.

(b) For purposes of seeking judicial review of actions taken pursuant to this section, suit may be filed in the District Court of the United States in the district where the requestor resides, where the credit union's principal place of business is located, or in the District of Columbia.

[FR Doc. 90-25384 Filed 10-25-90; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 73

[Airspace Docket No. 90-AWP-5]

Subdivision of Restricted Area R-4807 Tonopah; NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These actions subdivide Restricted Area R-4807 Tonopah, NV, into two separate areas designated as R-4807A and R-4807B. This subdivision will facilitate the release of portions of the existing restricted area for public access when military activities permit. The Continental Control Area is also amended by removing R-4807 and including R-4807A and R-4807B.

EFFECTIVE DATE: 0901 u.t.c., December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Linda Ullom, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-7683.

The Rule

These amendments to parts 71 and 73 of the Federal Aviation Regulations alter the existing R-4807 by subdividing it into two separate areas designated as R-4807A and R-4807B. Subdividing the existing R-4807 will result in more efficient management and utilization of airspace by facilitating the release of restricted airspace for public access when military activities permit. The Continental Control Area is also amended by removing R-4807 and including R-4807A and R-4807B. The amendments to this rule are contained totally within existing restricted airspace. No new restricted airspace is established. For the above reasons, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because these actions are minor technical amendments in which the public would not be particularly interested. Sections 71.151 and 73.48 of parts 71 and 73 of the Federal Aviation Regulations were republished in Handbook 7400.6F dated January 2, 1990.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 73

Aviation safety, Continental control area, and Restricted areas.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, parts 71 and 73 of the Federal Aviation Regulations (14 CFR parts 71 and 73) are amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.151 [Amended]

2. Section 71.151 is amended as follows:

R-4807 Tonopah, NV [Removed]

R-4807A Tonopah, NV [New]

R-4807B Tonopah, NV [New]

PART 73—SPECIAL USE AIRSPACE

3. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.48 [Amended]

4. Section 73.48 is amended as follows:

R-4807 Tonopah, NV [Removed]

R-4807A Tonopah, NV [New]

Boundaries. Beginning at lat. 36°51'00" N., long. 116°33'30" W.; to lat. 37°26'30" N., long. 117°04'30" W.; to lat. 37°33'00" N., long. 117°05'38" W.; to lat. 37°53'00" N., long. 117°05'38" W.; to lat. 37°53'00" N., long. 116°55'00" W.; to lat. 37°47'00" N., long. 116°55'00" W.; to lat. 37°33'00" N., long. 116°43'00" W.; to lat. 37°33'00" N., long. 116°26'00" W.; to lat. 37°53'00" N., long. 116°26'00" W.; to lat. 37°53'00" N., long. 116°11'00" W.; to lat. 37°42'00" N., long. 116°11'00" W.; to lat. 37°42'00" N., long. 115°53'00" W.; to lat. 37°33'00" N., long. 115°53'00" W.; to lat. 37°33'00" N., long. 115°48'00" W.; to lat. 37°28'00" N., long. 115°48'00" W.; to lat. 37°28'00" N., long. 116°00'00" W.; to lat. 37°16'00" N., long. 116°00'00" W.; to lat. 37°16'00" N., long. 116°11'00" W.; to lat. 37°28'00" N., long. 116°11'00" W.; to lat. 37°23'00" N., long. 116°17'00" W.; to lat. 37°23'00" N., long. 116°22'00" W.; to lat. 37°21'00" N., long. 116°27'00" W.; to lat. 37°21'00" N., long. 116°34'00" W.; to lat. 37°16'00" N., long. 116°31'00" W.; to lat. 37°16'00" N., long. 116°34'00" W.; to the point of beginning.

Designated altitudes. Unlimited.

Time of designation. Continuous.

Controlling agency. FAA, Los Angeles ARTCC.

Using agency. U.S. Air Force, Commander, Tactical Fighter Weapons Center, Nellis AFB, NV.

R-4807B Tonopah, NV [New]

Boundaries Beginning to lat. 37°16'00" N., long. 116°11'00" W.; to lat. 37°20'00" N., long. 116°11'00" W.; to lat. 37°23'00" N., long. 116°17'00" W.; to lat. 37°23'00" N., long. 116°22'00" W.; to lat. 37°21'00" N., long. 116°27'00" W.; to lat. 37°21'00" N., long. 116°34'00" W.; to lat. 37°16'00" N., long. 116°31'00" W.; to the point of beginning.

Designated altitudes. Unlimited.

Time of designation. Continuous.

Controlling agency. FAA, Los Angeles ARTCC.

Using agency. U.S. Air Force, Commander, Tactical Fighter Weapons Center, Nellis AFB, NV.

Issued in Washington, DC, on October 15, 1990.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90-25345 Filed 10-25-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 90-AWP-6]

Change to Controlling Agencies for Restricted Areas; HI

AGENCY: Federal Aviation Adminstration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the controlling agencies for twelve restricted areas in the Hawaiian Islands. The majority of the changes reflect a facility designation change from Air Route Traffic Control Center (ARTCC) to Combined Center Radar Approach Control (CERAP). In the case of R-3109 and R-3110, the controlling agencies are changed from Honolulu Flight Service Station (FSS) to Honolulu Air Traffic Control Tower (ATCT).

EFFECTIVE DATE: 0901 u.t.c., December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Lina Ullom, Military Operations Program Office (ATM-420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-7683.

The Rule

This amendment to part 73 of the Federal Aviation Regulations changes the controlling agencies for R-3101, R-3104A, R-3104B, R-3107A and R-3107B from FAA Honolulu ARTCC to FAA, Honolulu CERAP due to a facility designation change. The controlling agency for R-3103 is changed from FAA, Hilo Combined Station/Tower to FAA, Honolulu CERAP. For R-3109A, R3109B, R-3109C, R-3110A, R-3110B and R-3110C, the controlling agencies are changed from FAA, Honolulu FSS to FAA, Honolulu ATCT. These changes are made to create a more operationally advantageous environment for nonparticipants wishing to transit the restricted airspace. This action does not involve a change in the amount of controlled airspace. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.31 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore,—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 73 of the Federal Aviation Regulations (14 CFR part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.31 [Amended]

2. Section 73.31 is amended as follows:

R-3101 PMRFAC Four, HI [Amended]

By removing "Controlling agency. FAA, Honolulu ARTCC." and substituting "Controlling agency. FAA, Honolulu CERAP."

R-3103 Humuula, HI [Amended]

By removing "Controlling agency. FAA, Hilo Combined Station/Tower." and substituting "Controlling agency. FAA, Honolulu CERAP."

R-3104A, R-3104B Island of Kahoolawe, HI [Amended]

By removing "Controlling agency. FAA, Honolulu ARTCC." and substituting "Controlling agency. FAA, Honolulu CERAP."

R-3107A, R-3107B Kaula Rock, HI [Amended]

By removing "Controlling agency. FAA, Honolulu ARTCC." and substituting "Controlling agency. FAA, Honolulu CERAP."

R-3109A, R-3109B, R-3109C, R-3110A, R-3110B, R-3110C, Schofield-Makuia, Oahu, HI [Amended]

By removing "Controlling agency. FAA, Honolulu FSS." and substituting "Controlling agency. FAA, Honolulu ATCT."

Issued in Washington, DC on October 15, 1990.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

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FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084-AA26

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Central Air Conditioners and Heat Pumps

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission announces that the present ranges of comparability for central air conditioners and heat pumps will remain in effect until new ranges are published, and amends its Appliance Labeling Rule by updating the national average cost figure for electricity that must be used in the cost calculation formulas that manufacturers must provide on fact sheets or in directories. These cost calculation formulas are for consumers to use to calculate their own heating and cooling costs.

EFFECTIVE DATE: January 24, 1991.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202-326-3035).

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA) [1] requires the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances. Central air conditioners (including heat pumps) are included as one of the categories.

Section 305.8(b) of the rule requires manufacturers, after filing an initial report, to report annually by specified dates for each product type.[2] These

[1] Public Law 94-163, 89 Stat. 871 (Dec. 22, 1975).

[2] Reports for central air conditioners (including heat pumps) are due by July 1.

reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual cost or energy efficiency rating for the appliances derived from tests performed pursuant to the DOE test procedures. The reports also contain the model number, the number of tests performed on each model, and the capacity of each. Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information in line with these changes, the Commission is empowered, under Section 305.10 of the rule, to publish new ranges (but not more often then annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for central air conditioners (including heat pumps) have been received and analyzed and it has been determined to retain the ranges that were published on May 27, 1988.[3] In consideration of the foregoing, the present ranges for central air conditioners (including heat pumps) will remain in effect until the Commission publishes new ranges for these products.

In addition, this Notice provides an updated figure for the annual national average cost of electricity. This figure, along with national average cost figures for natural gas, propane, heating oil and kerosene, is published annually by the Department of Energy for the industry's use in calculating the cost figures required by the Commission's rule. The cost figure for electricity must be used in the cost calculation formulas that appear in appendices H and I. These formulas must be provided on fact sheets and in directories so consumers can calculate their own costs of operation for the central air conditioners and heat pumps that they are considering purchasing. The updated figure, which DOE published on March 12, 1990 (55 FR 9184), is 7.88 cents per kilowatt-hour. The formulas (and calculations) in both appendices have been changed to reflect this.

In consideration of the foregoing, the Commission revises Appendices H(2) and I(2) of its Appliance Labeling Rule by publishing the following cost figures for use in the labeling and advertising of central air conditioners and heat pumps beginning January 24, 1991.

[3] 53 FR 19728.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

PART 305—[AMENDED]

Accordingly, 16 CFR part 305 is amended as follows:

1. The authority citation for part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619) (1978), the National Appliance Energy Conservation Act (Pub. L. 100–12) (1987), and the National Appliance Energy Conservation Amendments of 1988 (Pub. L. 100–357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 42 U.S.C. 553.

2. In section 2. of both appendices H and I of part 305, the formulas are amended by removing the figure "7.70¢" and adding in its place, the figure "7.88¢". In addition, the formulas are amended by removing the figure "11.55¢" and adding, in its place, the figure "11.82¢".

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90–25407 Filed 10–25–90; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286

[DoD 5400.7–R]

Freedom of Information Act (FOIA) Program

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: This revision of 32 CFR part 286 provides substantive and administrative changes. It conforms to recent, significant court rulings in Freedom of Information Act litigation, and provides guidance relative to the treatment of electronic data under the Freedom of Information Act.

EFFECTIVE DATE: October 3, 1990.

ADDRESSES: Office of the Assistant Secretary of Defense (Public Affairs), Washington, DC 20301–1400.

FOR FURTHER INFORMATION CONTACT: Mr. C. Talbott, telephone number (202) 697–1180.

SUPPLEMENTARY INFORMATION: The Department of Defense published a proposed rule on August 31, 1990 (55 FR 35652) for public comments. No comments were received. It is hereby certified that this final rule does not exert a significant economic impact on a substantial number of small entities. This determination is made based upon the fact that the rule merely recodifies the procedural aspects of the Department of Defense's Freedom of Information Act Program, which includes guidance on how and from whom to request information pertaining to the Department of Defense; imposes no new requirements, rights, or benefits on small entities; and will have neither a beneficial nor an adverse effect on small entities.

List of Subjects in 32 CFR Part 286

Freedom of Information.

Accordingly, 32 CFR part 286 is revised as follows:

PART 286—FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

Subpart A—General Provisions

Sec.

Subpart B—FOIA Reading Rooms

Subpart C—Exemptions

Subpart D—For Official Use Only

Subpart E—Release and Processing Procedures

Subpart F—Fee Schedule

Subpart G—Reports

Subpart H—Education and Training

Authority: 5 U.S.C. 552.

Subpart A—General Provisions

§ 286.1 Purpose.

The purpose of this part is to provide policies and procedures for the Department of Defense (DoD) implementation of the Freedom of Information Act and DoD Directive 5400.7 [1] and to promote uniformity in the DoD Freedom of Information Act (FOIA) Program.

§ 286.2 Applicability.

(a) This part applies to the Office of the Secretary of Defense (OSD) which includes for the purpose of this part the Chairman, Joint Chiefs of Staff and Joint Staff, Unified Commands, the Military Departments, the Defense Agencies, and the DoD Field Activities (hereafter referred to as "DoD Components"), and takes precedence over all DoD Component regulations that supplement the DoD FOIA Program. A list of DoD Components is in Appendix F to this part.

(b) The National Security Agency records are subject to the provisions of this part, only to the extent the records are not exempt under Public Law 86–36.

§ 286.3 DoD public information.

The public has a right to information concerning the activities of its Government. DoD policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A DoD record requested by a member of the public who follows rules established by proper authority in the Department of Defense shall be withheld only when it is exempt from mandatory public disclosure under the FOIA. In order that the public may have timely information concerning DoD activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information should continue to be honored through appropriate means even though the request does not qualify under FOIA requirements.

§ 286.4 Control system.

A request for records that invokes the FOIA shall enter a formal control system designed to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified in this part. Any request for DoD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this part, unless otherwise required by § 286.7(m).

§ 286.5 Definitions.

As used in this part, the following terms and meanings shall be applicable:

(a) *FOIA request.* A written request for DoD records, made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency or a fugitive from the law that either explicitly or implicitly invokes the FOIA, DoD Directive 5400.7, this part, or DoD Component supplementing regulations or instructions.

(b) *Agency record.* (1) The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in DoD's possession and control at the time the FOIA request is made.

(2) The following are not included within the definition of the word "record":

(i) Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value, or value as evidence.

(ii) Administrative tools by which records are created, stored, and retrieved, if not created or used as sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium are not agency records. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software.) Exceptions to this position are outlined in paragraph (b)(3) of this section.

(iii) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(iv) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(v) Information stored within a computer for which there is no existing computer program for retrieval of the requested information.

(3) In some instances, computer software may have to be treated as an agency record and processed under the FOIA. These situations are rare, and shall be treated on a case-by-case basis. Examples of when computer software may have to be treated as an agency record are:

(i) When the data is embedded within the software and cannot be extracted without the software. In this situation, both the data and the software must be reviewed for release or denial under the FOIA.

(ii) Where the software itself reveals information about organizations, policies, functions, decisions, or procedures of a DoD Component, such as computer models used to forecast budget outlays, calculate retirement system costs, or optimization models on travel costs.

(iii) See subpart C of this part for guidance on release determinations of computer software.

(iv) A record must exist and be in the possession and control of the Department of Defense at the time of the request to be considered subject to this part and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request.

(v) If unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials are available to the public through an established distribution system with or

[1] Copies may be obtained, at cost, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

without charge, the provisions of 5 USC 552(a)(3) normally do not apply and they need not be processed under the FOIA. Normally, documents disclosed to the public by publication in the **Federal Register** also require no processing under the FOIA. In such cases, Components should direct the requester to the appropriate source, to obtain the record.

(c) *DoD Component.* An element of the Department of Defense, as defined in § 286.1, authorized to receive and act independently on FOIA requests. A DoD Component has its own initial denial authority (IDA) or appellate authority, and general counsel.

(d) *Initial denial authority (IDA).* An official who has been granted authority by the head of a DoD Component to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure.

(e) *Appellate authority.* The Head of the DoD Component or the Component head's designee having jurisdiction for this purpose over the record.

(f) *Administrative appeal.* A request by a member of the general public, made under the FOIA, asking the appellate authority of a DoD Component to reverse an IDA decision to withhold all or part of a requested record or to deny a request for waiver or reduction of fees.

(g) *Public interest.* Public interest is official information that sheds light on an agency's performance of its statutory duties because it falls within the statutory purpose of the FOIA in informing citizens about what their government is doing. That statutory purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files that reveals little or nothing about an agency's or official's own conduct.

(h) *Electronic data.* Electronic data are those records and information which are created, stored, and retrievable by electronic means. This does not include computer software, which is the tool by which to create, store, or retrieve electronic data. See paragraph (b)(2)(ii) and (iii) of this section for a discussion of computer software.

§ 286.7 Policy.

(a) *Compliance with the FOIA.* DoD personnel are expected to comply with the FOIA and this part in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.

(b) *Openness with the public.* The Department of Defense shall conduct its activities in an open manner consistent with the need or security and adherence to other requirements of law and regulation. Records not specifically exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

(c) *Avoidance of procedural obstacles.* DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this part and any supplemental regulations published by the DoD Components.

(d) *Prompt action on requests.* When a member of the public complies with the procedures established in this part for obtaining DoD records, the request shall receive prompt attention; a reply shall be dispatched within 10 working days, unless a delay is authorized. When a Component has a significant number of requests, *e.g.*, 10 or more, the requests shall be processed in order of receipt. However, this does not preclude a Component from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt. A DoD Component may expedite action on a request regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need or urgency is determined at the discretion of the Component processing the request.

(e) *Use of FOIA exemptions.* It is DoD policy to make records publicly available, unless they qualify for exemption under one or more of the nine exemptions. Components may elect to make a discretionary release, however, a discretionary release is generally not appropriate for records exempt under exemptions 1, 3, 4, 6 and 7(C). Exemptions 4, 6 and 7(C) cannot be claimed when the requester is the submitter of the information.

(f) *Public domain.* Nonexempt records released under the authority of this part are considered to be in the public domain. Such records may also be made available in Components' reading rooms to facilitate public access. Exempt records released pursuant to this part or other statutory or regulatory authority, however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional Committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

(g) *Creating a record.* (1) A record must exist and be in the possession and control of the Department of Defense at the time of the search to be considered subject to this part and the FOIA. Mere possession of a record does not presume departmental control and such records, or identifiable portions thereof, would be referred to the originating Agency for direct response to the requester. There is no obligation to create nor compile a record to satisfy an FOIA request. A DoD Component, however, may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record. Fee assessments shall be in accordance with subpart D of this part.

(2) With respect to electronic data, the issue of whether records are actually created or merely extracted from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, Components should apply a standard of reasonableness. In other words, if the capability exists to respond to the request, and the effect would be a business as usual approach, then the request should be processed. However, the request need not be processed where the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business as usual approach.

(h) *Description of requested record.* (1) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record, that enables the Government to locate the record with a reasonable amount of effort. The Act does not authorize "fishing expeditions." When a DoD Component receives a request that does not "reasonably describe" the requested record, it shall notify the requester of the defect. The defect should be highlighted in a

specificity letter, asking the requester to provide the type of information outlined in paragraph (h)(2) of this section. Components are not obligated to act on the request until the requester responds to the specificity letter. When practicable, Components shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act.

(2) The following guidelines are provided to deal with "fishing expedition" requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(i) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(iii) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, non random search based on the Component's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

(iv) The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers are provided only in connection with a request for records concerning the requester, only records retrievable by personal identifiers need be searched. Search for such records may be conducted under Privacy Act procedures. No record may be denied that is releasable under the FOIA.

(v) The previous guidelines notwithstanding, the decision of the DoD Component concerning reasonableness of description must be based on knowledge of its files. If the description enables DoD Component personnel to locate the record with reasonable effort, the description is adequate.

(i) *Referrals.* (1) A request received by a DoD Component having no records responsive to a request shall be referred routinely to another DoD Component , if the other Component confirms that it has the requested record, and this belief can be confirmed by the other DoD Component. In cases where the Component receiving the request has reason to believe that the existence or nonexistence of the record may in it self be classified, that Component shall consult the DoD Component having cognizance over the record in question before referring the request. If the DoD Component that is consulted determines that the existence or nonexistence of the record is in itself classified, the requester shall be so notified by the DoD Component originally receiving the request, and no referral shall take place. Otherwise, the request shall be referred to the other DoD Component, and the requester shall be notified of any such referral. Any DoD Component receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester.

(2) Whenever a record or a portion of a record is, after prior consultation, referred to another DoD Component or to a Government agency outside of the Department of Defense for a release determination and direct response, the requester shall be informed of the referral. Referred records shall only be identified to the extent consistent with security requirements.

(3) A DoD Component shall refer an FOIA request for a classified record that it holds to another DoD Component or agency outside the Department of Defense, if the record originated in the other DoD Component or outside agency or if the classification is derivative. In this situation, provide the record and a release recommendation on the record with the referral action.

(4) A DoD Component may refer a request for a record that it originated to another DoD Component or agency when the record was created for the use of the other DoD Component or agency. The DoD Component or agency for which the record was created may have an equally valid interest in withholding the record as the DoD Component that created the record. In such situations, provide the record and a release recommendation on the record with the referral action. An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor shall be at the discretion of the contracting officer. Any FOIA request shall be referred to the appropriate contracting officer and the requester shall be notified of the referral.

(5) Within the Department of Defense, a Component shall ordinarily refer an FOIA request for a record that it holds, but that was originated by another DoD Component or that contains substantial information obtained from another DoD Component, to that Component for direct response, after direct coordination and obtaining concurrence from the Component. The requester then shall be notified of such referral. DoD Components shall not, in any case, release or deny such records without prior consultation with the other DoD Component.

(6) DoD Components that receive referred requests shall answer them in accordance with the time limits established by the FOIA and this part. Those time limits shall begin to run upon receipt of the referral by the official designated to respond.

(7) Agencies outside the Department of Defense that are subject to the FOIA:

(i) A Component may refer an FOIA request for any record that originated in an agency outside the DoD or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the Component must respond to the request.

(ii) A DoD Component shall refer to the agency that provided the record any FOIA request for investigative, intelligence, or any other type of records that are on loan to the Department of Defense for a specific purpose, if the records are restricted from further release and so marked. However, if for investigative or intelligence purposes, the outside agency desires anonymity, a Component may only respond directly to the requester after coordination with the outside agency.

(iii) Notwithstanding anything to the contrary in paragraph (i)(1) of this section, Component shall notify requesters seeking National Security Council (NSD) or White House documents that they should write directly to the NSC or White House for such documents. DoD documents in which the NSC or White House has a concurrent reviewing interest shall be forwarded to the Office of the Assistant Secretary of Defense (Public Affairs)(OASD(PA)), ATTN: Directorate For Freedom of Information and Security Review (DFOISR), which shall effect coordination with the NSC or White House, and return the documents to the originating agency after NSC review and determination. NSC or White House documents discovered in Components' files which are responsive to the FOIA request shall be forwarded ASD(PA), ATTN: DFOISR, for subsequent coordination with the NSC or White House, and returned to the Component with a release determination.

(8) To the extent referrals are consistent with the policies expressed by this paragraph, referrals between offices of the same DoD Component are authorized.

(9) On occasion, the Department of Defense receives FOIA requests for General Accounting Office (GAO) documents containing DoD information, either directly from requesters, or as referrals from the GAO. The GAO is outside the Executive Branch, and as such, all FOIA requests for GAO documents containing DoD information will be processed under the provisions of Security Review or Mandatory Declassification Review (MDR) Directives. Requests received in DoD for unclassified GAO reports containing DoD information shall be transferred to the GAO Distribution Center, ATTN: DHISF, P.O. Box 6015, Gaithersburg, MD 20877–1450. Requests received in the Department of Defense for classified GAO documents (or documents unidentifiable as to classification) shall be referred to the GAO, Office of Security and Safety, Washington, DC 20548. After internal review, the GAO shall refer the request and documents to Office of the Inspector General, Department of Defense (OIG, DoD) and that Component shall refer the action to the OASD(PA), ATTN: DFOISR, for processing under Security Review or MDR provisions. (See DoD Directive 7650.2 [2]).

(j) *Authentication.* Records provided under this part shall be authenticated with an appropriate seal, whenever necessary, to fulfill an official Government or other legal function. This service, however, is in addition to that required under the FOIA and is not included in the FOIA fee schedule. DoD Components may charge for the service at a rate of $5.20 for each authentication.

(k) *Unified and Specified Commands.* (1) The Unified Commands are placed under the jurisdiction of the OSD, instead of the administering Military Department, only for the purpose of administering the DoD FOIA Program. This policy represents an exception to the policies directed in DoD Directive 5100.3 [3]; it authorizes and requires the Unified Commands to process Freedom of Information (FOI) requests in accordance with DoD Directive 5400.7 and this part. The Unified Commands shall forward directly to the OASD(PA), all correspondence associated with the appeal of an initial denial for records under the provisions of the FOIA. Procedures to effect this administrative requirement are outlined in appendix A of this part.

(2) The Specified Commands remain under the jurisdiction of the administering Military Department. The Commands shall designate IDAs within their headquarters; however, the appellate authority shall reside with the Military Department.

(l) *Records management.* FOIA records shall be maintained and disposed of in accordance with DoD Component Disposition instructions and schedules.

(m) *Relationship between the FOIA and the Privacy Act (PA).* Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records. In some instances, they may cite neither Act, but will imply one or both Acts. For these reasons, the following guidelines are provided to ensure that requesters receive the greatest amount of access under both Acts:

(1) Requesters who seek records about themselves contained in a PA system of records and who cite or imply the PA, will have their requests processed under the provisions of the PA.

(2) Requesters who seek records about themselves which are not contained in a PA system of records and who cite or imply the PA, will have their requests processed under the provisions of the FOIA, since they have no access under the PA.

(3) Requesters who seek records about themselves which are contained in a PA system of records and who cite or imply the FOIA or both acts will have their requests processed under the time limits of the FOIA and the exemptions and fees of the PA. This is appropriate since greater access will be received under the PA.

(4) Requesters who seek access to agency records and who cite or imply the PA and FOIA, will have their requests processed under the FOIA.

(5) Requesters who seek access to agency records and who cite or imply the FOIA, will have their requests processed under the FOIA.

(6) Requesters should be advised in final responses why their request was processed under a particular Act.

Subpart B—FOIA Reading Rooms

§ 286.9 Requirements.

(a) *Reading room.* Each Component shall provide an appropriate facility or facilities where the public may inspect and copy or have copied the materials described in the following paragraphs. In addition to the materials described in the following paragraphs, Components may elect to place other documents in their reading rooms as a means to provide public access to such documents. DoD Components may share reading room facilities if the public is not unduly inconvenienced. When appropriate, the cost of copying may be imposed on the person requesting the material in accordance with the provisions of subpart D of this part. The availability of records in a public reading room does not automatically place the material into the public domain.

(b) *Material availability.* The FOIA requires that so-called "(a)(2)" materials shall be made available in the FOI reading room for inspection and copying, unless such materials are published and copies are offered for sale. Identifying details that, if revealed would create a clearly unwarranted invasion of personal privacy may be deleted from "(a)(2)" materials made available for inspection and copying. In every case, justification for the deletion must be fully explained in writing. However, a DoD Component may publish in the **Federal Register** a description of the basis upon which it will delete identifying details of particular types of documents to avoid clearly unwarranted invasions of privacy. In appropriate cases, the DoD Component may refer to this description rather than write a separate justification for each deletion. So-called "(a)(2)" materials are:

(1) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, that may be cited, used, or relied upon as precedents in future adjudications.

(2) Statements of policy and interpretations that have been adopted by the agency and are not published in the **Federal Register**.

(3) Administrative staff manuals and instructions, or portions thereof, that establish DoD policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DoD Component. Examples of manuals and instructions not normally made available are:

(i) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(ii) Operations and maintenance manuals and technical information concerning munitions, equipment,

[2] See footnote 1 to § 286.1

[3] See footnote 1 to § 286.1

systems, and foreign intelligence operations.

§ 286.11 Indexes.

(a) *"(a)(2)" materials.* (1) Each DoD Component shall maintain in each facility prescribed in § 286.9(a) an index of materials described in § 286.9(b), that are issued, adopted, or promulgated, after July 4, 1967. No "(a)(2)" materials issued, promulgated, or adopted after July 4, 1967 that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before July 4, 1967, need not be indexed, but must be made available upon request if not exempted under this part.

(2) Each DoD Component shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of "(a)(2)" materials or supplements thereto unless it publishes in the **Federal Register** an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in subpart D of this part.

(3) Each index of "(a)(2)" materials or supplement thereto shall be arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for DoD Component convenience.

(b) *Other materials.* (1) Any available index of DoD Component material published in the **Federal Register**, such as material required to be published by section 552(a)(1) of the FOIA, shall be made available in DoD Component FOIA reading rooms.

(2) Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, "(a)(1)" materials shall, when feasible, be made available in FOIA reading rooms for inspection and copying. Examples of "(a)(1)" materials are: Descriptions of an agency's central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

Subpart C—Exemptions

§ 286.12 General provisions.

Records that meet the exemption criteria in § 286.13 may be withheld from public disclosure and need not be published in the **Federal Register**, made available in a library reading room, or provided in response to an FOIA request.

§ 286.13 Exemptions.

(a) *FOIA exemptions.* The following types of records may be withheld in whole or in part from public disclosure under the FOIA, unless otherwise prescribed by law. A discretionary release (see also § 286.7(e)) to one requester may preclude the withholding of the same record under a FOIA exemption if the record is subsequently requested by someone else. In applying exemptions, the identity of the requester and the purpose for which the record is sought are irrelevant with the exception that an exemption may not be invoked where the particular interest to be protected is the requester's interest.

(1) *Number 1.* Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as DoD 5200.1–R.[4] Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoD 5200.1–R, section 2–204f., apply. In addition, this exemption shall be invoked when the following situations are apparent:

(i) The fact of the existence or nonexistence of a record would itself reveal classifiable information. In this situation, Components shall neither confirm nor deny the existence or nonexistence of the record being requested. A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no record" response when a record does exist, and a "refusal to confirm or deny" when a record does not exist will itself disclose national security information.

(ii) Information that concerns one or more of the classification categories established by executive order and DoD 5200.1–R shall be classified if its unauthorized disclosure, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security.

(iii) Release of unclassified records which would enable a knowledgeable person to analyze the records either in isolation, or in concert with other unclassified records previously released, and determine information that is classified.

(2) *Number 2.* Those related solely to the internal personnel rules and practices of DoD or any of its Components. This exemption has two profiles, high b2 and low b2.

(i) Records qualifying under high b2 are those containing or constituting statutes, rules, regulations, orders, manuals, directives, and instructions the release of which would allow circumvention of these records thereby substantially hindering the effective performance of a significant function of the Department of Defense. Examples include:

(A) Those operating rules, guidelines, and manuals for DoD investigators, inspectors, auditors, or examiners that must remain privileged in order for the DoD Component to fulfill a legal requirement.

(B) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

(C) Computer software meeting the standards of § 286.5(b)(3), the release of which would allow circumvention of a statute or DoD rules, regulations, orders, manuals, directives, or instructions. In this situation, the use of the software must be closely examined to ensure a circumvention possibility exists.

(ii) Records qualifying under the low b2 profile are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records. Examples include rules of personnel's use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and trivial administrative data such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communications, and other like administrative markings.

(3) *Number 3.* Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria estabished by that statute for withholding or referring to particular types of matters to be withheld. Examples of statutes are:

[4] See footnote 1 to § 286.1

(i) National Security Agency Information Exemption, Public Law 86–36, section 6.

(ii) Patent Secrecy, 35 U.S.C. 181–188. Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(iii) Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162.

(iv) Communication Intelligence, 18 U.S.C. 798.

(v) Authority to Withhold From Public Disclosure Certain Technical Data, 10 U.S.C. 130 and DoD Directive 5230.25[5].

(vi) Confidentiality of Medical Quality Records: Qualified Immunity Participants, 10 U.S.C. 1102.

(vii) Physical Protection of Special Nuclear Material: Limitation on Dissemination of Unclassified Information, 10 U.S.C. 128.

(viii) Protection of Intelligence Sources and Methods, 50 U.S.C. 403(d)(3).

(4) *Number 4.* Those containing trade secrets or commercial or financial information that a DoD Component receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair some other legitimate government interest. Examples include:

(i) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data. See also 32 CFR part 286h, "release of Acquisition-Related Information."

(ii) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(iii) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(iv) Financial data provided in confidence by private exmployers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the Department of Defense.

(v) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(vi) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with Federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with 10 U.S.C. 2320–2321 and DoD Federal Acquisition Regulation Supplement (DFARS), 48 CFR subpart 27.4. Technical data developed exclusively with Federal funds may be withheld under Exemption Number 3 if it meets the criteria of 10 U.S.C. 130 and 32 CFR part 250 (see § 286.13(a)(3)(v)).

(vii) Computer software meeting the conditions of § 286.5(b)(3), which is copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would have an adverse impact on the potential market value of a copyrighted work.

(5) *Number 5.* Except as provided in § 286.12(a)(5)(ii) through (v), internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e)), or within or among DoD Components. Also exempted are records pertaining to the attorney-client privilege and the attorney work-product privilege.

(i) Examples include:

(A) The nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice, opinions, or suggestions.

(B) Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(C) Those nonfactual portions of evaluations by DoD Component personnel of contractors and their products.

(D) Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

(E) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interest.

(F) Records that are exchanged among agency personnel and within and among DoD Components or agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any attorney-client privilege.

(G) Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(H) Computer software meeting the standards of § 286.5(b)(3), which is deliberative in nature, the disclosure of which would inhibit or chill the decision making process. In this situation, the use of software must be closely examined to ensure its deliberative nature.

(I) Planning, programming, and budgetary information which is involved in the defense planning and resource allocation process. (ii) If any such intra or inter-agency record or reasonably segregable portion of such record hypothetically would be made available routinely through the "discovery process" in the course of litigation with the agency, i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing, then it should not be withheld from the general public even though discovery has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the "discovery process" by special order of the court based on agency maintaining its confidentiality, then the record or document need not be made available under this part. Consult with legal counsel to determine whether FOIA exemption 5 material would be routinely made available through the discovery process.

[5] See footnote 1 to § 286.1

(iii) Intra- or inter-agency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(iv) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(v) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(6) *Number 6.* Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act System of records that would constitute a clearly unwarranted invasion of privacy is prohibited, and could subject the releaser to civil and criminal penalties.

(i) Examples of other files containing personal information similar to that contained in personnel and medical files include:

(A) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(B) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(ii) Home addresses are normally not releasable without the consent of the individuals concerned. In addition, lists of DoD military and civilian personnel's names and duty addresses who are assigned to units that are sensitive, routinely deployable, or stationed in foreign territories can constitute a clearly unwarranted invasion of personal privacy.

(A) *Privacy interest.* A privacy interest may exist in personal information even though the information has been disclosed at some place and time. If personal information is not freely available from sources other than the Federal Government expended funds to prepare, index and maintain records on personal information, and the fact that a requester invokes FOIA to obtain these records indicates the information is not freely available.

(B) Published telephone directories, organization charts, rosters and similar materials for personnel assigned to units that are sensitive, routinely deployable, or stationed in foreign territories may be withheld under this exemption.

(iii) This exemption shall not be used in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family.

(iv) Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DoD Directive 5400.11.

(v) A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical or similar record may constitute a basis for deleting those reasonable segregable portions of that record, even when providing it to the subject of the record. When withholding personal information from the subject of the record, legal counsel should first be consulted.

(7) *Number 7.* Records or information compiled for law enforcement purposes; i.e., civil, or military law, including the implementation of executive orders or regulations issued pursuant to law. This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for law enforcement purposes.

(i) This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(A) Could reasonably be expected to interfere with enforcement proceeding.

(B) Would deprive a person of the right to a fair trial or to an impartial adjudication.

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

(*1*) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, Components shall neither confirm nor deny the existence or nonexistence of the record being requested.

(*2*) A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to confirm or deny" when a record does exist will itself disclose personally private information.

(*3*) Refusal to confirm or deny should not be used when

(*i*) The person whose personal privacy is in jeopardy has provided the requester with a waiver of his or her privacy rights; or

(*ii*) The person whose personal privacy is in jeopardy is deceased, and the agency is aware of that fact.

(D) Could reasonably be expected to disclose the identify of a confidential source, including a source within the Department of Defense, a State, local, or foreign agency or authority, or any private institution which furnishes the information on a confidential basis.

(E) Could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(F) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(G) Could reasonably be expected to endanger the life or physical safety of any individual.

(ii) Examples include:

(A) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(B) The identity of firms or individuals being investigated for alleged irregularities involving contracting with the Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States.

(C) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office with a DoD Component, or a lawful national security intelligence investigation conducted by an

authorized agency or office within a DoD Component. National security intelligence investigations include background security investigations and conducted for the purpose of obtaining affirmative or counterintelligence information.

(iii) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500) is not diminished.

(iv) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DoD Directive 5400.11.

(v) Exclusions. Excluded from the previous exemptions are the following two situations applicable to the Department of Defense:

(A) Whenever a request is made which involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceedings is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, Components may, during only such times as that circumstance continues, treat the records or information as not subject to the FOIA. In such situation, the response to the requester will state that no records were found.

(B) Whenever informant records maintained by a criminal law enforcement organization within a DoD Component under the informant's name or personal identifier, the Component may treat the records as not subject to the FOIA, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are not subject the exemption 7, the response to the requester will state that no records were found.

(8) *Number 8.* Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(9) *Number 9.* Those containing geological and geophysical information and data (including maps) concerning wells.

Subpart D—For Official Use Only

§ 286.15 General provisions.

(a) *General.* Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA Exemptions 2 through 9 shall be considered as being for official use only. No other material shall be considered or marked "For Official Use Only" (FOUO) and FOUO is not authorized as an anemic form of classification to protect national security interests.

(b) *Prior FOUO application.* The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemption or exemptions apply or applies, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release.

(c) *Historical papers.* Records such as notes, working papers, and drafts retained as historical evidence of DoD Component actions enjoy no special status apart from the exemptions under the FOIA.

(d) *Time to mark records.* The marking of records at the time of their creation provides notice of FOUO content and facilities review when a record is requested under the FOIA. Records request under the FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

(e) *Distribution statement.* Information in a technical document that requires a distribution statement pursuant to DoD Directive 5230.24 [6] shall bear that statement and may be marked FOUO, as appropriate.

§ 286.17 Location of markings.

(a) An unclassified document containing FOUO information shall be marked "For Official Use Only" at the bottom on the outside of the front cover (if any), on each page containing FOUO information and on the outside of the back.

(b) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(c) Within a classified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page.

(d) Other records, such as photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

(e) FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

This document contains information
EXEMPT FROM MANDATORY
DISCLOSURE under the FOIA.
Exemptions . . . . apply.

§ 286.19 Dissemination and transmission.

(a) *Release and transmission procedures.* Until FOUO status is terminated, the release and transmission instructions that follow apply:

(1) FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(2) DoD holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches to fulfill a government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use Only", and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

(3) Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4 [7]. Release to the GAO is governed by DoD Directive 7650.1 [8]. Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be

[6] See footnote 1 to § 286.1

[7] See footnote 1 to § 286.1

[8] See footnote 1 to § 286.1

requested, without marking the record, to protect against its public disclosure for reasons that are explained.

(b) *Transporting FOUO information.* Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations may be sent by fourth-class mail.

(c) *Electrically transmitted messages.* Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures.

§ 286.20 Safeguarding FOUO information.

(a) *During duty hours.* During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to nongovernmental personnel.

(b) *During nonduty hours.* At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or government contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of Public Law 86–36 shall meet the safeguards outlined for that group of records.

§ 286.23 Termination, disposal and unauthorized disclosures.

(a) *Termination.* The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

(b) *Disposal.* (1) Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

(2) Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. chapter 33, as implemented by DoD Component instructions concerning records disposal.

(c) *Unauthorized disclosure.* The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in civil and criminal sanctions against responsible persons. The DoD Component that originated the FOUO information shall be informed of its unauthorized disclosure.

Subpart E—Release and Processing Procedures

§ 286.25 General provisions.

(a) *Public information.* (1) Since the policy of the Department of Defense is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for a DoD record made under the FOIA may be denied only when:

(i) The record is subject to one or more of the exemptions in subpart C of this part.

(ii) The record has not been described well enough to enable the DoD Component to locate it with a reasonable amount of effort by an employee familiar with the files.

(iii) The requester has failed to comply with the procedural requirements, including the written agreement to pay or payment of any required fee imposed by the instructions of the DoD Component concerned.

When personally identifiable information in a record is requested by the subject of the record or his attorney, notarization of the request may be required.

(2) Individuals seeking DoD information should address their FOI requests to one of the addresses listed in appendix B of this part.

(b) *Requests from private parties.* The provisions of the FOIA are reserved for persons with private interests as opposed to federal or foreign governments seeking official information. Requests from private persons will be made in writing, and will clearly show all other addressees within the Federal Government to whom the request was also sent. This procedure will reduce processing time requirements, and ensure better inter- and intra-agency coordination. Components are under no obligation to establish procedures to receive hand delivered requests. Release of records to individuals under the FOIA is considered public release of information, except as provided for in §§ 286.7(f) and 286.13(a).

(c) *Requests from government officials.* Requests from officials of State, or local Governments for DoD Component records shall be considered the same as any other requester. Requests from members of Congress not seeking records on behalf of a Congressional Committee, Subcommittee, either House sitting as a whole, or made on behalf of their constituents shall be considered the same as any other requester (See also §§ 286.7(f) and 286.25(d)). Requests from officials of foreign governments shall be considered the same as any other requester. Requests from officials of foreign governments that do not invoke the FOIA shall be referred to appropriate foreign disclosure channels and the requester so notified.

(d) *Privileged release to U.S. government officials.*

(1) Subject to 32 CFR part 159a, applicable to classified information, 32 CFR part 286a, applicable to personal privacy, or other applicable law, records exempt from release under Subpart C of this part may be authenticated and released, without requiring release to other FOIA requesters, in accordance with DoD Component regulations to U.S. government officials requesting them on behalf of Federal governmental bodies, whether legislative, executive, administrative, or judicial, as follows:

(i) To a Committee or Subcommittee of Congress, or to either Housesitting as a whole in accordance with DoD Directive 5400.4.

(ii) To the Federal courts, whenever ordered by officers of the court as necessary for the proper administration of justice.

(iii) To other Federal Agencies, both executive and administrative, as determined by the Head of a DoD Component or designee.

(2) DoD Components shall inform officials receiving records under the provisions of paragraph (d)(1) of this section, that those records are exempt from public release under the FOIA and are privileged. DoD Components also shall advise officials of any special handling instructions

§ 286.27 Initial determinations.

(a) *Initial denial authority.* (1) Components shall limit the number of IDAs appointed. In designating its IDAs, a DoD Component shall balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA.

(2) The initial determination of whether to make a record available upon request may be made by any suitable official designated by the DoD Component in published regulations. The presence of the marking "For Official Use Only" does not relieve the designated official of the responsibility to review the requested record for the purpose of determining whether an exemption under this part is applicable and should be invoked.

(3) The officials designated by DoD Components to make initial determinations should consult with public affairs officers (PAOs) to become familiar with subject matter that is considered to be newsworthy, and advise PAOs of all requests from news media representatives. In addition, the officials should inform PAOs in advance when they intend to withhold or partially withhold a record, if it appears that the withholding action may be challenged in the media.

(b) *Reasons for not releasing a record.* There are seven reasons for not complying with a request for a record:

(1) The request is transferred to another DoD Component, or to another federal agency.

(2) The request is withdrawn by the requester.

(3) The information requested is not a record within the meaning of the FOIA and this part.

(4) A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

(5) The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this part or DoD Component supplementing regulations.

(6) The DoD Component determines through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record. (a "no record" determination is not considered a denial; therefore an appeal is not appropriate).

(7) The record is denied in accordance with procedures set forth in the FOIA and this part.

(c) *Denial tests.* To deny a requested record that is in the possession or control of a DoD Component, it must be determined that the record is included in one or more of the nine categories of records exempt from mandatory disclosure as provided by the FOIA and outlined in subpart C of this part.

(d) *Reasonably segregable portions.* Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not reasonable to segregate portions of the record for release.

(e) *Response to requester.*

(1) Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 working days after receipt of the request by the official designated to respond.

(2) When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with preliminary procedural requirements.

(3) When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the name and title or position of the official who made the determination, and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemptions on which the denial is based. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to a higher final authority within the DoD Component.

(4) The response to the requester should contain information concerning the fee status of the request, consistent the provisions of subpart F of this part.

(5) The explanation of the substantive basis for a denial shall include specific citation of the statutory exemption applied under provisions of this part. Merely referring to a classification or to a "For Official Use Only" marking on the requested record does not constitute a proper citation or explanation of the basis for invoking an exemption.

(6) When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

(f) *Extension of time.* (1) In unusual circumstances, when additional time is needed to respond, the DoD Component shall acknowledge the request in writing within the 10-day period, describe the circumstances requiring the delay, and indicate the anticipated date for substantive response that may not exceed 10 additional working days. Unusual circumstances that may justify delay are:

(i) The requested record is located in whole or in part at places other than the office processing the request.

(ii) The request requires the collection and evaluation of a substantial number of records.

(iii) Consultation is required with other DoD Components or agencies having substantial interest in the subject matter to determine whether the records requested are exempt from disclosure in whole or in part under provisions of this part or should be released as a matter of discretion.

(2) The statutory extension of time for responding to an initial request must be approved on a case-by-case basis by the final appellate authority for the DoD Component, or in accordance with regulations of the DoD Component, or in accordance with regulations of the DoD Component that establish guidance governing the circumstances in which such extensions may be granted.

(3) In these unusual cases where the statutory time limits cannot be met and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester with a request that he agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is

made. Components are reminded that the requester still retains the right to treat this delay as a defacto denial with full administrative remedies.

(4) As an alternative to the taking of formal extensions of time as described in paragraph (f), (f)(1), (f)(2), and (f)(3) of this section, the negotiation by the cognizant FOIA coordinating office of informal extensions in time with requesters is encouraged where appropriate.

(g) *Misdirected requests.* Misdirected requests shall be forwarded promptly to the DoD Component with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the DoD Component that manages the records requested.

(h) *Records of non-U.S. government source.* (1) When a request is received for a record that was obtained from a non-U.S. Government, source, or for a record containing information clearly identified as having been provided by a non-U.S. Government source, the source of the record or information (also known as "the submitter" for matters pertaining to proprietary data under 5 U.S.C. 552(b)(4), § 286.13(a)(4), and 31 U.S.C. 3717) shall be notified promptly of that request and afforded reasonable time (e.g. 30 calendar days) to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. This practice is required for those FOIA requests for data not deemed clearly exempt from disclosure under FOIA exemption (d)(4). If, for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and established that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. The final decision to disclose information claimed to be exempt under FOIA exempted (b)(4) shall be made by an official equivalent in rank to the official who would make the decision to withhold that information under the FOIA. When a substantial issue has been raised, the DoD Component may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved prior to making an agency determination. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the requester shall be notified, and action on the request normally shall not be taken until after the outcome of that court action is known. When the requester brings court action to compel disclosure, the submitter shall be promptly notified of this action.

(2) The coordination provisions of this paragraph apply to any non-U.S. Government record in the possession and control of the Department of Defense from multi-national organizations, such as North Atlantic Treaty Organization (NATO) and North American Aerospace Defense Command (NORAD), or foreign governments. Coordination with foreign governments under the provisions of this paragraph shall be made through Department of State.

(i) *File of initial denials.* Copies of all initial denials shall be maintained by each DoD Component in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation.

(j) *Special mail services.* Components are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

(k) *Receipt accounts.* The Treasurer of the United States has established two accounts for FOIA receipts. These accounts, which are described the following, shall be used for depositing all FOIA receipts, except receipts for industrially-funded and non-appropriated funded activities. Components are reminded that the following account numbers must be preceded by the appropriate disbursing office two digit prefix. Industrially-funded and nonappropriated funded activity FOIA receipts shall be deposited to the applicable fund.

(1) *Receipt Account 3210 Sale of Publications and Reproductions, Freedom of Information Act.* This account shall be used when depositing funds received from providing existing publications and forms that meet the Receipt Account Series description found in Federal Account Symbols and Titles.

(2) *Receipt Account 3210 Fees and Other Charges for Services, Freedom of Information Act.* This account is used to deposit search fees, fees for duplication and reviewing (in the case of commercial requesters) records to satisfy requests that could not be filed with existing publications or forms.

§ 289.29 Appeals.

(a) *General.* If the official designated by the DoD Component to make initial determinations on requests for records declines to provide a record because the official considers it exempt, that decision may be appealed by the requester, in writing, to a designated appellate authority. The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. Appeal procedures also apply to the disapproval of a request for waiver or reduction of fees. A "no record" finding may not be appealed, although the requester may ask the agency to search other files or provide more detailed identification to facilitate another search of the files.

(b) *Time of receipt.* An FOI appeal has been received by a DoD Component when it reaches the office of an appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

(c) *Time limits.* (1) The requester shall be advised to file an appeal so that it reaches the appellate authority no later than 60 calendar days after the date of the initial denial letter. At the conclusion of this period, the case may be considered closed; however, such closure does not preclude the requester from filing litigation. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification. Records which are denied shall be retained for a period of six years to meet the statute of limitations of claims requirement.

(2) Final determinations on appeals normally shall be made within 20 working days after receipt.

(d) *Delay in responding to an appeal.* (1) If additional time is needed due to the unusual circumstances described in paragraph § 286.27(f) the final decision may be delayed for the number of working days (not to exceed 10), that were not used as additional time for responding to the initial request.

(2) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the usual circumstances identified in § 286.27(f), they may consider their administrative remedies exhausted. They may, however, without prejudicing their right

of judicial remedy, await a substantive response. The DoD Component shall continue to process the case expeditiously, whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing of a complaint shall be forwarded to the Department of Justice.

(e) *Response to the requester.* (1) When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

(2) Final refusal to provide a requested record or to approve a request for waiver or reduction of fees must be made in writing by the Head of the DoD Component or by a designated representative.

The response, at a minimum, shall include the following: (i) The basis for the refusal shall be explained to the requester, in writing, both with regard to the applicable statutory exemption or exemptions invoked under provisions of this part.

(ii) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

(iii) The final denial shall include the name and title or position of the official responsible for the denial.

(iv) The response shall advise the requester that the material being denied does not contain meaningful portions that are reasonably segregable.

(v) The response shall advise the requester of the right to judicial review.

(f) *Consultation.* (1) Final refusal, involving issues not previously resolved or that the DoD Component knows to be inconsistent with rulings of other DoD Component, ordinarily should not be made before consultation with the Office of the General Counsel of the Department of Defense.

(2) Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the Government shall be provided to the Department of Justice, ATTN: Office of Legal Policy, Office of Information and Policy, Washington, DC 20530.

§ 286.31 Judicial actions.

(a) *General.* (1) This section states current legal and procedural rules for the convenience of the reader. The statements of rules do not create rights or remedies not otherwise available, nor do they bind the Department of Defense to particular judicial interpretations or procedures.

(2) A requester may seek an order from a United States District Court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the head of a Component or an appellate designee or when the DoD Component has failed to respond within the time limits prescribed by the FOIA and in this part.

(b) *Jurisdiction.* The requester may bring suit in the United States District Court in the district in which the requester resides or is the requesters place of business, in the district in which the record is located, or in the District of Columbia.

(c) *Burden of proof.* The burden of proof is on the DoD Component to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

(d) *Actions by the court.* (1) When a DoD Component has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow the Component additional time to complete its review of the records.

(2) If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

(3) When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether DoD Component personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit System Protection Board shall conduct an investigation to determine whether or not disciplinary action is warranted. The DoD Component is obligated to take the action recommended by the special counsel.

(4) The court may punish the responsible official for contempt when a DoD Component fails to comply with the court order to produce records that it determines have been withheld improperly.

(e) *Non-United States government source information.* A requester may bring suit in a U.S. District Court to compel the release of records obtained from a nongovernment source or records based on information obtained from a nongovernment source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

(f) *Litigation status sheet.* FOIA managers at DoD Component level shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Component personnel. The Litigation Status Sheet at appendix C provides a standard format for recording information concerning FOIA litigation and forwarding that information to the Office of the Secretary of Defense. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint shall forward a Litigation Status Sheet, with items 1 through 6 completed, and a copy of the complaint to the OASD(PA), ATTN: DFOISR, with an information copy to the General Counsel, Department of Defense, ATTN: Office of Legal Counsel. A revised Litigation Status Sheet shall be provided at each stage of the litigation.

Subpart F—Fee Schedule

§ 286.33 General provisions.

(a) *Authorities.* The Freedom of Information Act (5 U.S.C. 552), as amended; by the Freedom of Information Reform Act of 1986; the Paperwork Reduction Act (44 U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a); the Budget and Accounting Act of 1921 (31 U.S.C. 1 *et seq.*); the Budget and Accounting Procedures Act (31 U.S.C. 67 *et seq.*); the Defense Authorization Act for FY 87, section 954, (Pub. L. 99-661), as amended by the Defense Technical Corrections Act of 1987 (Pub. L. 100-26).

(b) *Application.* (1) The fees described in this Subpart apply to FOIA requests, and conform to the Office of Management and Budget Uniform Freedom of Information Act Fee Schedule and Guidelines. They reflect direct costs for search, review (in the case of commercial requesters); and duplication of documents, collection of which is permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in

the routine course of business, nor are they meant as a substitute for any other schedule of fees, such as 32 CFR part 288, which does not supersede the collection of fees under the FOIA. Nothing in this Subpart shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records. A "statute specifically providing for setting the level of fees for particular types of records" (5 U.S.C. 552(a)(4)(a)(vi)) means any statute that enables a Government Agency such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set and collect fees. Components should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the GPO or NTIS, they inform requesters of the steps necessary to obtain records from those sources.

(2) The term "direct costs" means those expenditures a Component actually makes in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to an FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the costs of operating duplicating machinery. These factors have been included in the fee rates prescribed at § 286.35(a). Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are stored.

(3) The term "search" includes all time spent looking for material that is responsive to a request. Search also includes a page-by-page or line-by-line identification (if necessary) of material in the document to determine if it, or portions thereof are responsive to the request. Components should ensure that searches are done in the most effective and least expensive manner so as to minimize costs for both the Component and the requester. For example, Components should not engage in line-by-line searches when duplicating an entire document known to contain responsive information would prove to be the less expensive and quicker method of complying with the request. Time spent reviewing documents in order to determine whether to apply one or more of the statutory exemptions is not search time, but review time. See paragraph (b)(5) of this section, for the definition of review, and § 286.35(b)(2), for information pertaining to computer searches.

(4) The term "duplication" refers to the process of making a copy of a document in response to an FOIA request. Such copies can take the form of paper copy, microfiche, audiovisual, or machine readable documentation (*e.g.*, magnetic tape or disc), among others. Every effort will be made to ensure that the copy provided is in a form that is reasonably usable, the requester shall be notified that their copy is the best available and that the agency's master copy shall be made available for review upon appointment. For duplication of computer tapes and audiovisual, the actual cost, including the operator's time, shall be charged. In practice, if a Component estimates that assessable duplication charges are likely to exceed $25.00, it shall notify the requester of the estimate, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(5) The term "review" refers to the process of examining documents located in response to an FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does not include the time spent resolving general legal or policy issues regarding the application of exemptions. It should be noted that charges for commercial requesters may be assessed only for the initial review. Components may not charge for reviews required at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable.

(c) *Fee restrictions.* (1) No fees may be charges by any DOD Components if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge. For example, for a request (other than one from a commercial requester) that involved two hours and ten minutes of search time, and resulted in one hundred and five pages of documents, a Component would determine the cost of only ten minutes of search time, and only five pages of reproduction. If this processing cost was equal to, or less than the cost to the Component for billing the requester and processing the fee collected, no charges would result.

(2) Requesters receiving the first two hours of search and the first one hundred pages of duplication without charge are entitled to such only once per request. Consequently, if a Component, after completing its portion of a request, finds it necessary to refer the request to a subordinate office, another DOD Component, or another Federal Agency to action their portion of the request, the referring Component shall inform the recipient of the referral of the expended amount of search time and duplication cost to date.

(3) The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the Component of receiving and recording a remittance, and processing the fee for deposit in the Department of Treasury's special account. The cost to the Department of the Treasury to handle such remittance is negligible and shall not be considered in Components' determinations.

(4) For the purposes of these restrictions, the word "pages" refers to paper copies of a standard size, which will normally be "8½×11" or "11×14". Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout; however, might meet the terms of the restriction.

(5) In the case of computer searches, the first two free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal $24.00 (two hours of equivalent search at the clerical level), amounts of computer costs in excess of that amount are chargeable as computer search time.

(d) *Fee waivers.* (1) Documents shall be furnished without charge, or at a charge reduced below fees accessed to the catgories of requesters in paragraph (e) of this section when the Component determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the Department of Defense and is not primarily in the commercial interest of the requester.

(2) When assessable costs for an FOIA request total $15.00 or less, fees shall be waived automatically for all requesters, regardless of category.

(3) Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis, consistent with the following factors:

(i) Disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government."

(A) *The subject of the request.* Components should analyze whether the subject matter of the request involves issues which will significantly contribute to the public understanding of the operations or activities of the Department of Defense. Requests for records in the possession of the Department of Defense which were originated by nongovernment organizations and are sought for their intrinsic content, rather than informative value will likely not contribute to public understanding of the operations or activities of the Department of Defense. An example of such records might be press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a DOD activity. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of the Department of Defense; however, the age of a particular record shall not be the sole criteria for denying relative significance under this factor. It is possible to envisage an informative issue concerning the current activities of the Department of Defense, based upon historical documentation. Requests of this nature must be closely reviewed consistent with the requester's stated purpose for desiring the records and the potential for public understanding of the operations and activities of the Department of Defense.

(B) *The informative value of the information to be disclosed.* This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and shall inform the public on the operations or activities of the Department of Defense. While the sujbect of a request may contain information which concerns operations or activities of the Department of Defense, it may not always hold great potential for contributing to a meaningful undestanding of these operations or activities. An example of such would be a heavily redacted record, the balance of which may contain only random words, fragmented sentences, or paragraph headings. A determination as to whether a record in this situation will contribute to the public understanding of the operations or activities of the Department of Defense must be approached with caution, and carefully weighed against the arguments offered by the requester. Another example is information already known to be in the public domain. Disclosure of duplicative, or nearly identical information already existing in the public domain may add no meaningful new information concerning the operations and activities of the Department of Defense.

(C) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform the public, rather than simply the individual requester or small segment of interested persons. The identity of the requester is essential in this situation in order to determine whether such requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, researching a particular subject, doing doctoral dissertation work, or indigence are insufficient without demonstrating the capacity to further disclose the information in a manner which will be informative to the general public. Requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information, and their intended means of dissemination to the public.

(D) *The significance of the contribution to public understanding.* In applying this factor, Components must differentiate the relative significance or impact of the disclosure against the current level of public knowledge, or understanding which exists before the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing previously unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public. A decision regarding significance requires objective judgment, rather than subjective determination, and must be applied carefully to determine whether disclosure will likely lead to a significant public understanding of the issue. Components shall not make value judgments as to whether the information is important enough to be made public.

(ii) Disclosure of the information "is not primarily in the commercial interest of the requester."

(A) *The existence and magnitude of a commercial interest.* If the request is determined to be of a commercial interest, Components should address the magnitude of that interest to determine if the requester's commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether the requester is of a commercial nature, Components may draw inference from the requester's identity and circumstances of the request. In such situations, the provisions of § 286.33(e), apply. Components are reminded that in order to apply the commercial standards of the FOIA, the requester's commercial benefit must clearly override any personal or non-profit interest.

(B) *The primary interest in disclosure.* Once a requester's commercial interest has been determined, Components should then determine if the disclosure would be primarily in that interest. This requires a balancing test between the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver of reduction of fees would be inappropriate. As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research, may recognize a commercial benefit, either directly, or indirectly (through the institution they represent); however, normally such pursuits are primarily undertaken for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile government information for marketing can normally be presumed to have an interest primarily of a commercial nature.

(4) Components are reminded that the above factors and examples are not all inclusive. Each fee decision must be

considered on a case-by-case basis and upon the merits of the information provided in each request. When the element of doubt as to whether to charge or waive the fee cannot be clearly resolved, Components should rule in favor of the requester.

(5) In addition, the following additional circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

(i) A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(ii) A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g. $15.00—$30.00).

(e) *Fee assessment.* (1) Fees may not be used to discourage requesters, and to this end, FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters) and duplication.

(2) In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, Components shall adhere to the following procedures:

(i) Analyze each request to determine the category of the requester. If the Component determination regarding the category of the requester is different than that claimed by the requester, the Component shall:

(A) Notify the requester that he should provide additional justification to warrant the category claimed, and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category justification from the requester, and within a reasonable period of time (i.e., 30 calendar days), the Component shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights of the determination.

(B) Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the Component.

(ii) Requesters must submit a fee declaration appropriate for the below categories.

(A) *Commercial.* Requesters must indicate a willingness to pay all search, review and duplication costs.

(B) *Educational or noncommercial scientific institution or news media.* Requesters must indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(C) *All others.* Requesters must indicate a willingness to pay assessable search and duplication costs if more than two hours of search effort or 100 pages of records are desired.

(iii) If the above conditions are not met, then the request need not be processed and the requester shall be so informed.

(iv) In the situations described by paragraphs (e)(2) (i) and (ii) of this section, Components must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among Components, and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should Component estimates exceed the actual amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement.

(v) No DoD Component may require advance payment of any fee; i.e., payment before work is commenced or continued on a request, unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.00. As used in this sense, a timely fashion is 30 calendar days from the date of billing (the fees have been assessed in writing) by the Component.

(vi) Where a Component estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, the Component shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(vii) Where a requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 calendar days from the date of the billing), the Component may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, and to make an advance payment of the full amount of the estimated fee before the Component begins to process a new or pending request from the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717, and confirmed with respective Finance and Accounting Offices.

(viii) After all work is completed on a request, and the documents are ready for release, Components may request payment before forwarding the documents if there is no payment history on the requester, or if the requester has previously failed to pay a fee in a timely fashion (*i.e.*, within 30 calendar days from the date of the billing). In the case of the latter, the previsions of paragraph (e)(2)(vii) of this section apply. Components may not hold documents ready for release pending payment from requesters with a history of prompt payment.

(ix) When Components act under paragraphs (e)(i) through (vii) of this section, the administrative time limits of the FOIA (*i.e.*, 10 working days from receipt of initial requests, and 20 working days from receipt of appeals, plus permissible extensions of these time limits) will begin only after the Component has received a willingness to pay fees and satisfaction as to category determination, or fee payments (if appropriate).

(x) Components may charge for time spent searching for records, even if that search fails to locate records responsive to the request. Components may also charge search and review (in the case of commercial requesters) time if records located are determined to be exempt from disclosure. In practice, if the Component estimates that search charges are likely to exceed $25.00 it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) *Commercial requesters.* Fees shall be limited to reasonable standard charges for document search, review and duplication when records are requested for commercial use. Requesters must reasonably describe the records sought (see § 286.7(h)).

(i) The term "Commercial use" request refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, Components must determine the use to which a requester will put the documents requested. Moreover, where a Component has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, Copmponents should seek additional

clarification before assigning the request to a specific category.

(ii) When Components receive a request for documents for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters (unlike other requesters) are not entitled to two hours of free search time, nor 100 free pages of reproduction of documents. Moreover, commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. However, because use is the exclusive determining criteria, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a non-profit organization could make a request that is for commercial use. Such situations must be addressed on a case-by-case basis.

(4) *Educational institution requesters.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research. Requesters must reasonably describe the records sought (see § 286.7(h)). The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, and institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(5) *Non-commercial scientific institution requesters.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request in made by a non-commercial scientific institution whose purpose is scientific research. Requesters must reasonably describe the records sought (see § 286.7(h)). The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as defined in paragraph (e)(3) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(6) Components shall provide documents to requesters in paragraph (e)(4) and (5) of this section, for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in these categories, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of scholarly (from an educational institution) or scientific (from a non-commercial scientific institution) research.

(7) *Representatives of the news media.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media. Requesters must reasonably describe the records sought (see § 286.7(h)).

(i) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. Moreover, as traditional methods of news delivery evolve (*e.g.*, electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but Components may also look to the past publication record of a requester in making this determination.

(ii) To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (e)(7)(i) of this section, and his or her request must not be made for commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. For example, a document request by a newspaper for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category, and entitled to records at the cost of reproduction alone (excluding charges for the first 100 pages).

(iii) "Representative of the news media" does not include private libraries, private repositories of Government records, or middlemen, such as information vendors or data brokers.

(8) *All other requesters.* Components shall charge requesters who do not fit into any of the above categories, fees which recover the full direct cost of searching for and duplicating records, except that the first two hours of search time and the first 100 pages of duplication shall be furnished without charge. Requestes must reasonably describe the records sought (see § 286.7(h)). Requests from subjects about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974, which permit fees only for duplication. Components are reminded that this category of requester may also be eligible for a waiver or reduction of fees if disclosure of the information is in the public interest as defined under paragraph (d) of this section (See also paragraph (e)(3)(ii)) of this section.

(f) *Aggregating requests.* Except for requests that are for a commercial use, a Component may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When a Component reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, the agency may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30 day period had been made to avoid fees. For requests made over a longer period; however, such a presumption becomes harder to sustain and Components should have a solid basis for determining that aggregation is warranted in such cases. Components are cautioned that before aggregating requests from more than one requester, they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may Components aggregate multiple requests on unrelated subjects from one requester.

Effect of the Debt Collection Act of 1982 (Pub. L. 97–365). The Debt

Collection Act of 1982 (Pub. L. 97-365) provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. Components may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester of the amount owed. The interest rate shall be as prescribed in 31 U.S.C. 3717. Components should verify the current interest rate with respective Finance and Accounting Offices. After one demand letter has been sent, and 30 calendar days have lapsed with no payment, Components may submit the debt to respective Finance and Accounting Offices for collection pursuant to the Debt Collection Act of 1982.

(h) *Computation of fees.* The fee schedule in this Subpart shall be used to compute the search, review (in the case of commercial requesters) and duplication costs associated with processing a given FOIA request. Costs shall be computed on time actually spent. Neither time-based nor dollar-based minimum charges for search, review and duplication are authorized.

§ 286.35 Collection of fees and fee rates.

(a) *Collection of fees.* Collection of fees will be made at the time of providing the documents to the requester or recipient when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs. Collection of fees may not be made in advance unless the requester has failed to pay previously assessed fees within 30 calendar days from the date of the billing by the DoD Component, or the Component has determined that the fee will be in excess of $250 (see § 286.33(e)).

(b) *Search time.*

(1) Manual search:

Type	Grade	Hourly rate ($)
Clerical	E9/GS8 and below	12
Professional	01-06/GS9-GS/GM15.	25
Executive	07/GS/GM16/ES1 and above.	45

(2) *Computer search:* Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The salary scale (equating to paragraph (a)(1) of this section) for the computer operator/programmer determining how to conduct and subsequently executing the search will be recorded as part of the computer search.

(c) *Duplication.*

Type	Cost per page (cents)
Pre-Printed material	02.
Office copy	15.
Microfiche	25.
Computer copies	Actual cost of duplicating (tapes or printouts) the tape or printout (includes operator's time and cost of the tape).

(d) *Review time* (in the case of commercial requesters):

Type	Grade	Hourly rate($)
Clerical	E9/GS8 and below	12
Professional	01-06/GS9-GS/GM15.	25
Executive	07/GS/GM16/ES1 and above.	45

(e) *Audiovisual documentary materials.* Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(f) *Other records.* Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

(g) *Costs for special services.* Complying with requests for special services is at the discretion of the Components. Neither the FOIA, nor its fee structure cover these kinds of services. Therefore, Components may recover the costs of special services requested by the requester after agreement has been obtained in writing from the requester to pay for one or more of the following services:

(1) Certifying that records are true copies.

(2) Sending records by special methods such as express mail, etc.

§ 286.37 Collection of fees and fee rates for technical data.

(a) *Fees for technical data.* (1) Technical data, other than technical data that discloses critical technology with military or space application, if required to be released under the FOIA, shall be released after the person requesting such technical data pays all reasonable costs attributed to search, duplication and review of the records to be released. Technical data, as used in this section, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software, or date incidental to contract administration, such as financial and/or management information. DoD Components shall retain the amounts received by such a release, and it shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request. All reasonable costs as used in this sense are the full costs to the Federal Government of rendering the service, or fair market value of the service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absence of a known market value, charges shall be based on recovery of full costs to the Federal Government. The full costs shall include all direct and indirect costs to conduct the search and to duplicate the records responsive to the request. This cost is to be differentiated from the direct costs allowable under § 286.35 for other types of information released under the FOIA.

(2) *Waiver.* Components shall waive the payment of costs required in § 286.37(a)(1), which are greater than the costs that would be required for release of this same information under § 286.35 if:

(i) The request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer, or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States. However, Components may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation;

(ii) The release of technical data is requested in order to comply with the terms of an international agreement; or,

(iii) The Component determines in accordance with § 286.373(d)(1), that such a waiver is in the interest of the United States.

(3) *Fee rates*—(i) *Search time*—(A) *Manual search.*

Type	Grade	Hourly rate ($)
Clerical	E9/GS8 and below	13.25
(Minimum Charge)		8.30

Professional and Executive (To be established at actual hourly rate prior to search. A minimum charge will be established at ½ hourly rates)

(B) Computer search is based on the total cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The wage (based upon the scale in paragraph (a)(3)(i) of this section) for the computer operator and/or programmer determining how to conduct, and subsequently executing the search will be recorded as part of the computer search:

(ii) *Duplication.*

Type	Cost ($)
Aerial photographs, specifications, permits, charts, blueprints, and other technical documents	2.50
Engineering data (microfilm):	
Aperture cards:	
Silver duplicate negative, per card	.75
When key punched and verified, per card	.85
Diazo duplicate negative, per card	.65
When key punched and verified, per card	.75
32mm roll film, per frame	.50
16mm roll film, per frame	.45
Paper prints (engineering drawings), each	1.50
Paper reprints of microfilm indices, each	.10

(iii) *Review time.*

Type	Grade	Hourly rate ($)
Clerical	E9/GS8 and below	13.25
(Minimum Charge)		8.30

Professional and Executive (To be established at actual hourly rate prior to review. A minimum charge will be established at ½ hourly rates).

(4) *Other technical data records.* Charges for any additional services not specifically provided in § 286.37(a)(3), consistent with DoD Instruction 7230.7 [9], shall be made by Components at the following rates:

(i) Minimum charge for office copy (up to six images) $3.50
(ii) Each additional image ..... .10
(iii) Each typewritten page 3.50
(iv) Certification and validation with seal, each 5.20
(v) Hand-drawn plots and sketches, each hour or fraction thereof 12.00

[9] See footnote 1 to § 286.1

Subpart G—Reports

§ 286.39 Reports control.

The reporting requirement outlined in this Subpart is assigned Report Control Symbol DD–PA(A)1365.

§ 286.41 Annual report.

(a) *Reporting time.* Each DoD component shall prepare statistics and accumulate paperwork for the preceding calendar year on those items prescribed for the annual report and submit them in duplicate to the ASD(PA) on or before each February 1. Existing DoD standards and registered date elements are to be used for all data requirements to the greatest extent possible in accordance with the provisions of DoD Directive 5000.11 [10]. The standard data elements are contained in DoD Directive 5000.12–M [11].

(b) *Annual report content.* The following instructions and attached format shall be used in preparing the annual report:

(1) *Item 1.*—(i) *Total requests.* Enter the total number of FOIA requests responded to during the calendar year.

(ii) *Granted in full.* Enter the total number of FOIA requests responded to and granted in full during the calendar year. (This may include requests granted by your office, yet still requiring action by another office.)

(iii) *Denied in part.* Enter the total number of FOIA requests responded to and denied in part based on one or more of the nine FOIA exemptions. (Do not report denial of fee waivers.)

(iv) *Denied in full.* Enter the total number of FOIA requests responded to and denied in full based on one or more of the nine FOIA exemptions. (Do not report denial of fee waivers.)

(v) *"Other Reason" responses.* Enter the total number of FOIA requests in which you were unable to provide all or part of the requested information based on an "Other Reason" response. Paragraph (b)(2) of this section explains the six possible "Other Reasons".

(vi) *Total actions.* Enter the total number of FOIA actions taken during the calendar year. This number will be the sum of paragraphs (b)(1)(i) through (v) of this section.

(2) *Item 2*—(i) *Exemptions invoked on initial determinations.* Enter the number of times an exemption was claimed for each request that was denied in full or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal to or greater than the sum of paragraph (b)(1) (iii) and (iv) of this section.

[10] See footnote 1 to § 286.1

[11] See footnote 1 to § 286.1

(ii) *"(b)(3)" statutes invoked on initial determinations.* Identify the statutes cited and number of times invoked when you claimed an FOIA (b)(3) exemption. The total number of instances will be equal to the total in paragraph (b)(2)(i) of this section. Cite the specific sections when invoking the Atomic Energy Act of 1954 or the National Security Act of 1947. To qualify as an FOIA (b)(3) exemption, the statute must contain clear wording that the information covered will not be disclosed. The following examples are not FOIA (b)(3) statutes:

(A) 5 U.S.C. 552a—Privacy Act
(B) 17 U.S.C. 101 et. seq.—Copyright Act
(C) 18 U.S.C. 793—Gathering, Transmitting or Losing Defense Information
(D) 18 U.S.C. 794—Gathering or Delivering Defense Information to Aid Foreign Governments
(E) 18 U.S.C. 1905—Trade Secrets Act
(F) 28 U.S.C. 1498—Patent and Copyright Cases

(iii) *"Other reasons" cited on initial determinations.* Identify the "Other Reason" response cited when responding to a FOIA request and enter the number of times each was claimed.

(A) *Transferred request.* Enter the number of times a request was transferred to another DoD component or Federal Agency for action.

(B) *Lack of records.* Enter the number of times a search of files failed to identify records responsive to subject request and there was no statutory obligation to create a record.

(C) *Failure of requester to reasonbly describe record.* Enter the number of times a FOIA request could not be acted upon since the requester failed to reasonably describe the record(s) being sought.

(D) *Other failures by requester to comply with published rules and/or directives.* Enter the number of times a requester failed to follow published rules concerning time, place, fees, and procedures.

(E) *Request withdrawn by requester.* Enter the number of times a requester withdrew a request and/or appeal.

(F) *Not an agency record.* Enter the number of times a requester was provided a response indicating the requested information was not an agency record.

(G) *Total.* Enter the sum of paragraphs (b)(2) (i) through (iii) of this section. This number will be equal to or greater than the number in paragraph (b)(1)(v) of this section, since more than one reason may be claimed for each "other Reason" response.

(3) *Item 3—Initial denial authorities by participation.* Enter the name, title,

and activity of each individual who signed a partial or total denial response and give the number of instances of participation. The total number of instances will equal the sum of paragraphs (b)(1) (iii) and (iv) of this section. For military show the rank (abbreviated) with the name; for civilians use Mr., Mrs., Ms., Hon, etc. Show the individual's full title and complete organization (do not use acronyms or abbreviations, other than US). See example shown.

BG John G. Smith, Director, Personnel and Administration, US European Command

(4) *Item 4.*

(i) *Total requests.* Enter the total number of FOIA appeals responded to during the calendar year.

(ii) *Granted in full.* Enter the total number of FOIA appeals responded to and granted in full during the year.

(iii) *Denied in part.* Enter the total number of FOIA appeals responded to and denied in part based on one or more of the nine FOIA exemptions.

(iv) *Denied in full.* Enter the total number of FOIA appeals responded to and denied in full based on one or more of the nine FOIA exemptions.

(v) *"Other Reason" responses.* Enter the total number of FOIA appeals in which you were unable to provide the requested information based on an "Other Reason" response. Paragraph (b)(2)(ii) of this section explains the six possible "Other Reasons".

(vi) *Total actions.* Enter the total number of FOIA appeal actions taken during the calendar year. This number will be the sum of paragraphs (b)(4)(ii) through (v) of this section.

(5) *Item 5.*—(i) *Exemptions invoked on appeal determinations.* Enter the number of times an exemption was claimed for each appeal that was denied in full or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal to or greater than the sum of paragraphs (b)(4)(iii) and (iv) of this section.

(ii) *"(b)(3)" statues invoked on appeal determinations.* Identify the statutes cited and number of times invoked when you claimed an FOIA (b)(3) exemption. The total number of instances will be equal to the total in paragraph (b)(5)(i) of this section. Cite the specific sections when invoking the Atomic Energy Act of 1954 or the National Security Act of 1947. To qualify as an FOIA (b)(3) exemption, the statute must contain clear wording that the information covered will not be disclosed. Examples which are not FOIA (b)(3) statutes are listed in paragraph (b)(2)(ii) of this section.

(iii) *"Other Reasons" cited on appeal determinations.* Identify the "Other Reason" response cited when responding to a FOIA appeal and enter the number of times each was claimed. See paragraph (b)(2)(iii) of this section for description of "Other Reasons".

(6) *Item 6—Appeal denial authorities by participation.* Enter the name, title, and activity of each individual who signed a partial or total appeal denial response and give the number of instances of participation. The total number of instances will equal the sum of paragraphs (b)(4)(iii) and (iv) of this section. For military show the rank (abbreviated) with the name; for civilians use Mr., Mrs., Ms., Hon, etc. Show the full title and complete organization (do not use acronyms or abbreviations, other than US). See paragraph (b)(3)(i) of this section for example shown.

(7) *Item 7—Court opinions and actions taken.* Briefly describe the results of each suit the Judge Advocate General and/or the General Counsel participated in during the calendar year. See example in paragraph (b)(7)(i) of this section. *Armed Forces Relief and Benefit Association* v. *Department of Defense, Department of the Army, Department of the Air Force and Department of the Navy,* C.A. 89-0689, U.S.D.C. D.C., March 15, 1989. Plaintiff filed suit for defendent's refusal to release servicemen's name and duty addresses. Information was held pursuant to 5 USC 552(b)(2) and (b)(6). Plaintiff voluntarily dismissed suit June 19, 1989.

(8) *Item 8—FOIA implementation rules or regulations.* List all changes or revisions of FOIA rules or regulations affecting the implementation of the FOIA program, followed by the **Federal Register** reference (volume number, date, and page) that announces the change or revision to the public. Append a copy of each. See example shown.

DoD 5400.7-R "DoD Freedom of Information Act Program"—32 CFR Part 286, Vol 54, No. 155, pg 33190, 14 Aug 89.

(9) *Item 9—Fees collected from the public.* Enter the total amount of fees collected from the public during the calendar year. This includes search, review and reproduction costs only.

(10) *Item 10.*—(i) *Availability of records.* Report all new categories or segregable portions of records now being released upon request. (Since this item is very seldom used, it does not appear on the form. Report any such records on a separate sheet of paper.)

(ii) *FOI program costs.*—(A) *Personnel costs.* Paragraphs (b)(10)(ii)(A)(*1*) and (*2*) of this section are used to capture manyears and salary costs of personnel primarily involved in planning, program management and/or administrative handling of FOIA requests. Determine salaries for military personnel by using the Composite Standard Pay Rates (DoD 7220.9-M [12], "Department of Defense Accounting Manual"). For civilian personnel use Office of Personnel Management salary table and add 16 percent for benefits. A sample computation is shown in the following table.

Grade	Number of personnel	Salary	Percentage of time	Cost
0-5	1	$88,463	10	$8,846
0-1	1	37,219	30	11,165
GS-12	1	41,557	50	20,779
Total			90	40,790

(*1*) *Estimated manyears.* Add the total percentages of time for personnel involved in administering the FOI program and divide by 100. In the example shown previously (10+30+50)/100=.9 manyears.

(*2*) *Manyear costs.* Total costs associated with salaries of indviduals involved in administering FOTA program. In the example shown previously, the total cost is $40,790.

(*3*) *Estimated manhour costs by category.* This section accounts for all other personnel not reported in paragraphs (b)(10)(ii) (*1*) and (*2*) of this section who are involved in processing FOIA requests. Enter the total hourly cost for each of the five areas described in the following:

(*i*) *Search time.* This includes only those direct costs associated with time spent looking for material that is responsive to a request, including line-by-line identificaton of material within a document to determine if it is responsive to the request. Searches may be done manually or by computer using existing programming.

(*ii*) *Review and excising.* This includes all direct costs incurred during the process of examining documents located in response to a request to determine whether any portion of any document located is permitted to be withheld. It also includes excising documents to prepare them for release. It does not include time spent resolving general legal or policy issues regarding the application of exemptions.

[12] See footnote 1 § 286.1

(*iii*) *Coordination and approval.* This includes all costs involved in coordinating the release/denial of documents requested under the FOIA.

(*iv*) *Correspondence/form preparation.* This includes all costs involved in typing responses, fillng out forms, etc., to respond to a FOIA request.

(*v*) *Other activities.* This includes all other processing costs not covered above, such as processing time by the mail room.

(*vi*) *Total.* Enter the sum of paragraphs (b)(10)(ii)(A)(*3*) (*i*) through (*v*) of this section.

(*4*) *Overhead.* This is the cost of supervision, space, and administrative support. It is computed as 25 percent of the sum of paragraph (b)(10) (ii) and (iii) of this section.

(*5*) *Total.* Enter the sum of paragraphs (b)(10) (ii), (iii) and (iv) of this section.

(*B*) *Other case-related costs.* Using the fee schedule, enter the total amounts incurred in each of the areas in the following.

(*1*) *Computer search time.* This includes cost of central processing unit, input/output devices, memory, etc. of the computer system used, as well as the wage of the machine's operator/programmer.

(*2*) *Office copy reproduction.* This is the cost of reproducing normal documents with office copying equipment.

(*3*) *Microfiche reproduction.* This is the cost of reproducing records and providing microfiche.

(*4*) *Printed records.* This is the cost of providing reproduced copies of forms, publications, or reports.

(*5*) *Computer copy.* This is the actual cost of duplicating magnetic tapes, floppy diskettes, computer printouts, etc.

(*6*) *Audiovisual materials.* This is the actual cost of duplicating audio or video tapes or like materials, to include the wage of the person doing the work.

(*7*) *Other.* Report all other costs which are easily identifiable, such as per diem, operation of courier vehicles, training courses, printing (indexes and forms), long distance telephone calls, special mail services, use of indicia, etc.

(*8*) *Subtotal.* Enter the sum of paragraphs (b)(10)(ii)(B) (*1*) through (*7*) of this section.

(*9*) *Overhead.* This is the cost of supervision, space, and administrative support. It is computed as 25 percent of (b)(10)(B)(*8*) of this section.

(*10*) *Total.* Enter the sum or paragraphs (b)(10)(ii)(b) (*8*) and (*9*) of this section.

(*C*) *Cost of routine requests processed.* This item is optional. Some reporting activities may find it economical to develop an average cost factor for processing repetitive routine requests rather than tracking costs on each request as it is processed. Care should be exercised so that costs are comprehensive to include a 25 percent overhead, yet are not duplicated elsewhere in the report. Multiply the number of routine requests processed times the cost factor to compute this amount.

(*D*) *Total costs.* Enter the sum of paragraphs (b)(10)(ii)(C) (*1*) through (*3*) of this section. *Formal time limit extensions.* Enter the total number of instances in which it was necessary to seek a formal 10-working-day time extension for one of the reasons explained below.

(*1*) *Locations.* The need to search for and collect the requested records from another activity that was separate from the office processing the request.

(*2*) *Volume.* The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records indicated in a single request.

(*3*) *Consultation.* The need for consultation with another agency having a substantial interest in the material requested.

(*4*) *Court involvement.* Where court actions were taken on the basis of exhaustion of administrative procedures because the department/activity was unable to comply with the request within the applicable time limits, and in which a court allowed additional time upon a showing of exceptinal circumstances, provide a copy of each court opinion and court order containing such an extension of time.

(*5*) *Total.* Enter the sum of paragraphs (b)(10)(ii)(D) (*1*) through (*iv*) of this section.

Subpart H—Education and Training

§ 286.43 Responsibility and purpose.

(a) *Responsibility.* The Head of each DOD Component is responsible for the establishment of educational and training programs on the provisions and requirements of this part. The educational programs should be targeted toward all members of the DOD Component, developing a general understanding and appreciation of the DOD FOIA Program; whereas, the training programs should be focused toward those personnel who are involved in the day-to-day processing of FOI requests, and should provide a thorough understanding of the procedures outlined in this part.

(b) *Purpose.* The purpose of the educational and training programs is to promote a positive attitude among DOD personnel and raise the level of understanding and appreciation of the DOD FOIA Program, thereby improving the interaction with members of the public and improving the public trust in the Department of Defense.

(c) *Scope and principles.* Each Component shall design its FOIA educational and training programs to fit the particular requirements of personnel dependent upon their degree of involvement in the implementation of this part. The program should be designed to accomplish the following objectives:

(1) Familiarize personnel with the requirements of the FOIA and its implementation by this part.

(2) Insruct personnel, who act in FOI matters, concerning the provisions of this part, advising them of the legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information.

(3) Provide for the procedural and legal guidance and instruction, as may be required, in the discharge of the responsibilities of initial denial and appellate authorities.

(4) Advise personnel of the penalties for noncompliance with the FOIA.

(d) *Implementation.* To ensure uniformity of interpretation, all major educational and training programs concerning the implementation of this Regulation should be coordinated with the Director, Freedom of Information and Security Review, OASD(PA).

(e) *Uniformity of legal interpretation.* In accordance with DOD Directive 5400.7, the General Counsel of the Department of Defense shall ensure uniformity in the legal position and interpretation of the DOD FOIA Program.

Appendix A to Part 286—Unified Commands—Processing Procedures for FOIA Appeals

1. General.

a. In accordance with DOD Directive 5400.7 and this part, the Unified Commands are placed under the jurisdiction of the Office of the Secretary of Defense, instead of the administering Military Department, only for the purpose of administering the Freedom of Information Act (FOIA) Program. This policy represents an exception to the policies in DOD Directive 5100.3.

b. The policy change above authorizes and requires the Unified Commands to process FOIA requests in accordance with DOD Directive 5400.7 and DOD Instruction 5400.10 [1] and to forward directly to the

[1] Copies may be obtained, at cost from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

OASD(PA) all correspondence associated with the appeal of an initial denial for information under the provisions of the FOIA.

2. Responsibilities of Commands. Unified Commanders in Chief shall:

a. Designate the officials authorized to deny initial FOI requests for records.

b. Designate an office as the point-of-contact for FOI matters.

c. Refer FOIA cases to the OASD(PA)for review and evaluation when the issues raised are of unusual significance, precedent setting, or otherwise require special attention or guidance.

d. Consult with other OSD and DOD Components that may have a significant interest in the requested record prior to a final determination. Coordination with agencies outside of the Department of Defense, if required, is authorized.

e. Coordinate proposed denials of records with the appropriate Unified Command's Office of the Staff Judge Advocate.

f. Answer any request for a record within 10 working days of receipt. The requester shall be notified that his request has been granted or denied. In unusual circumstances, such notification may state that additional time, not to exceed 10 working days, is required to make a determination.

g. Provide to the OASD(PA) when the request for a record is denied in whole or in part, a copy of the response to the requester of his representative, and any internal memoranda that provide background information or rationale for the denial.

h. State in the response that the decision to deny the release of the requested information, in whole or in part, may be appealed to the Assistant Secretary of Defense (Public Affairs), the Pentagon, Washington, DC 20301–1400.

i. Upon request, submit to OASD(PA) a copy of the records that were denied. ASD(PA) shall make such requests when adjudicating appeals.

3. Fees for FOI Requests. The fees charged for requested records shall be in accordance with subpart F of this part.

4. Communications. Excellent communication capabilities currently exist between the OASD(PA) and the Public Affairs Offices of the Unified Commands. This communication capability shall be used for FOI cases that are time sensitive.

5. Reporting Requirements.

a. The Unified Commands shall submit to the OASD(PA) an annual report. The istructions for the report are outlined in subpart F of this part.

b. The annual report shall be submitted in duplicate to the OASD(PA) not later than each February 1. This reporting requirement is assigned Report Control Symbol DD–PA(A) 1365.

Appendix B to Part 286—Addressing FOIA Requests

1. General.

a. The Department of Defense includes the Office of the Secretary of Defense and the Joint Staff, the Military Departments, the Unified Commands, the Defense Agencies, and the DoD Field Activities.

b. The Department does not have a central repository for DoD records. FOIA requests, therefore, should be addressed to the DoD Component that has custody of the record desired. In answering inquiries regarding FOIA requests, DoD personnel shall assist requesters in determining the correct DoD Component to address their requests. If there is uncertainty as to the owership of the record desired, the requester shall be referred to the DoD Component that is most likely to have the record.

2. Listing of DoD Component Addresses for FOI Requests.

a. Office of the Secretary of Defense and the Joint Staff. Send all requests for records from the below listed offices to: Office of the Assistant Secretary of Defense (Public Affairs), ATTN: Directorate for Freedon of Information and Security Review, room 2C757, The Pentagon, Washington, DC 20301–1400. Executive Secretariat
Under Secretary of Defense (Policy)
  Assistant Secretary of Defense (International Security Affairs)
  Assistant Secretary of Defense (International Security Policy)
  Assistant Secretary of Defense (Special Operations/Low-Intensity Conflict)
  Principal Deputy Under Secretary of Defense (Strategy and Resources)
  Deputy Under Secretary of Defense (Trade Security Policy)
  Deputy Under Secretary of Defense (Security Policy)
  Director of Net Assessment
  Director, Defense Security Assistance Agency
  Defense Technology Security Administration
Under Secretary of Defense (Acquisition)
  Assistant Secretary of Defense (Production & Logistics
  Assistant Secretary of Defense for Command, Control, Communications, and Intelligence
  Assistant to the Secretary of Defense (Atomic Energy)
  Director of Defense Research and Engineering
  Director of Small and Disadvantaged Business Utilization
Comptroller of the Department of Defense
Assistant Secretary of Defense (Force Management & Personnel)
Assistant Secretary of Defense (Health Affairs)
Assistant Secretary of Defense (Legislative Affairs)
Assistant Secretary of Defense (Public Affairs)
Assistant Secretary of Defense (Program Analysis and Evaluation)
Assistant Secretary of Defense (Reserve Affairs)
General Counsel, Department of Defense
Director, Operational Test and Evaluation
Assistant to the Secretary of Defense (Intelligence Oversight)
Assistant to the Secretary of Defense (Intelligence Policy)
Defense Advanced Research Projects Agency
Strategic Defense Initiative Organization
  Defense Systems Management College
  National Defense University
  Armed Forces Staff College
  Department of Defense Dependents Schools Uniformed Services University of the Health Sciences

b. Department of the Army. Army records may be requested from those Army officials who are listed in 32 CFR part 518, appendix B. Send requests to the Chief, Freedon of Information and Privacy Acts Division, Information System Command, ATTN: ASQNS–OP F, room 1146, Hoffman I, 2461 Eisenhower Avenue, Alexandria, VA 22331–0301 for records of Headquarters, U.S. Army, or if there is uncertainty as to which Army activity may have the records.

c. Department of the Navy. Navy and Marine Corps records may be requested from any Navy or Marine Corps activity by addressing a letter to the Commanding Officer and clearly indicating that it is an FOI request. Send request to Chief of Naval Operations, Code OP–09B30, room 5E521, Pentagon, Washington, DC 20350–2000, for records of the Headquarters, Department of the Navy, and to Freedom of Information and Privacy Act Office, Code MI–3, HQMC, room 4327, Washington, DC 10308–0001, for records of the U.S. Marine Corps, or if there is uncertainty as to which Navy or Marine activities may have the records.

d. Department of the Air Force. Air Force records may be requested from the Commander of any any Air Force installation, major command, or separate operating agency (ATTN: FOIA Office). For Air Force records of Headquarters, United States Air Force, or if there is uncertainty as to which Air Force activity may have the records, send requests to Secretary of the Air Force, ATTN: SAF/AAIS(FOIA), Pentagon, Room 4A1088C Washington, DC 20330–1000.

e. Defense Contract Audit Agency (DCAA). DCAA records may be requested from any of its regional offices or from its Headquarters. Requesters should send FOI requests to the Defense Contract Audit Agency, ATTN: CMR, Cameron Station, Alexandria, VA 22304–6178, for records of its headquarters or if there is uncertainty as to which DCAA region may have the records sought.

f. Defense Communications Agency (DCA). DCA records may be requested from any DCA field activity or from its Headquarters. Requesters should send FOI requests to Defense Communications Agency, Code ADR, Washington, DC 20305–2000.

g. Defense Intelligence Agency (DIA). FOI requests for DIA records may be addressed to Defense Intelligence Agency, ATTN: RTS–1, Washington, DC 20340–3299.

h. Defense Investigation Service (DIS). All FOI requests for DIS records

should be sent to the Defense Investigative Service, ATTN: V0020, 1900 Half St., SW, Washington, DC 20324–1700.

(i) Defense Logistics Agency (DLA). DLA records may be requested from its headquarters or from any of its field activities. Requesters should send FOI requests to Defense Logistics Agency, ATTN: DLA–XAM, Cameron Station, Alexandria, VA 22304–6100.

j. Defense Mapping Agency (DMA). FOI requests for DMA records may be sent to the Defense Mapping Agency, 8613 Lee Highway, Fairfax, VA 22031–2137.

k. Defense Nuclear Agency (DNA). FOI requests for DNA records may be sent to the Defense Nuclear Agency, Public Affairs Office, room 113, 6801 Telegraph Road, Alexandria, VA 22310–3398.

l. National Security Agency (NSA). FOI requests for NSA records may be sent to the National Security Agency/Central Security Service, ATTN: Q–43, Fort George G. Meade, MD 20755–6000.

m. Office of the Inspector General, Department of Defense (OIG, DoD). FOI requests for IG, DoD records may be sent to the Department of Defense Office of the Inspector General, Assistant Inspector General for Investigations, ATTN: Deputy Director FOIA/PA Division, 400 Army Navy Drive, Arlington, VA 22202–2884.

3. Other Addresses. Although the below organizations are OSD and Joint Staff Components for the purposes of the FOIA, requests may be sent directly to the addresses indicated.

a. Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS). Director, OCHAMPUS, ATTN: Freedom of Information Officer, Aurora, CO 80045–6900.

b. Chairman, Armed Services Board of Contract Appeals (ASBCA). Chairman, Armed Services Board of Contract Appeals, Skyline Six, 5109 Leesburg Pike, Falls Church, VA 22041–3208.

c. U.S. Central Command. U.S. Central Command/CCJl/AG, MacDill Air Force Base, FL 33608–7001.

d. U.S. European Command. Headquarters, U.S. European Command/ECJ1–AR(FOIA), APO New York 09128–4209.

e. U.S. Southern Command. U.S. Commander-in-Chief, Southern Command/SCSJA, APO Miami 34003–0007.

f. U.S. Pacific Command. U.S. Commander-in-Chief, Pacific Command, USPACOM FOIA Coordinator (J18A), Administrative Support Division, Joint Secretariat, Box 28, Camp H. M. Smith, HI 96861–5025.

g. U.S. Special Operation Command. U.S. Special Operations Command, ATTN: Freedom of Information Officer, ATTN: SOJ1–AG, MacDill Air Force Base, FL 33608.

h. U.S. Atlantic Command. Commander-in-Chief, Atlantic Command, Code J02P, Norfolk, VA 23511–5100.

i. U.S. Space Command. Chief, Records Management Division, Directorate of Administration, United States Space Command, Peterson Air Force Base, CO 80914–5001.

4. National Guard Bureau. FOI requests for National Guard Bureau records may be sent to the Chief, National Guard Bureau, (NGB–DAI), Pentagon, room 2C362, Washington, DC 20310–2500.

5. Miscellaneous. If there is uncertainty as to which DoD Component may have the DoD record sought, the requester may address a Freedom of Information request to the Office of the Assistant Secretary of Defense (Public Affairs), ATTN: Directorate for Freedom of Information and Security Review, room 2C757, The Pentagon, Washington, DC 20301–1400.

Appendix C to Part 286—Litigation Status Sheet

1. Case Number [1]
2. Requester
3. Document Title or Description
4. Litigation
a. Date Complaint Filed
b. Court
c. Case File Number [1]
5. Defendants (agency and individual)
6. Remarks: (brief explanation of what the case is about)
7. Court Action
a. Court's Finding
b. Disciplinary Action (as appropriate)
8. Appeal (as appropriate)
a. Date Complaint Filed
b. Court
c. Case File Number [1]
d. Court's Finding
e. Disciplinary Action (as appropriate)

[1] Number used by Component for reference purposes

Appendix D to Part 286—Other Reason Categories

1. *Transferred Requests.* This catetgory applies when responsibility for making a determination or a decision on categories 2, 3, or 4 below is shifted from one Component to another, or to another Federal Agency.

2. *Lack of Records.* This category covers those situations wherein the requester is advised the DoD Component has no record or has no statutory obligation to create a record.

3. *Failure of Requester to Reasonably Described Record.* This category is specifically based on Section 552(a)(3)(a) of the FOIA.

4. *Other Failures by Requesters to Comply with Published Rules or Directives.* This category is based on section 552(a)(3)(b) of the FOIA and includes instances of failure to follow published rules concerning time, place, fees, and procedures.

5. Request Withdrawn by Requester. This category covers those situations wherein the requester asks an agency to disregard the request (or appeal) or pursues the request outsides FOIA channels.

6. *Not an Agency Record.* This category covers situations where the information requested is not an agency record within the meaning of the FOIA and this part.

Appendix E to Part 286—Record of Freedom of Information (FOI) Processing Cost (DD Form 2086)

BILLING CODE 3810-01-M

RECORD OF FREEDOM OF INFORMATION *(FOI)* PROCESSING COST

Please read instructions on reverse before completing form.

1. REQUEST NUMBER	2. TYPE OF REQUEST (X one)		3. DATE COMPLETED (YYMMDD)
	[ ] a. INITIAL	[ ] b. APPEAL	

	TOTAL HOURS (1)	HOURLY RATE (2)		COST (3)
4. CLERICAL HOURS *(E-9/GS-8 and below)*				
a. SEARCH				*
b. REVIEW / EXCISING				**
c. CORRESPONDENCE AND FORMS PREPARATION		X $12.00	=	
d. OTHER ACTIVITY				
5. PROFESSIONAL HOURS *(0-1 - 0-6/GS-9 - GS/GM-15)*				
a. SEARCH				*
b. REVIEW / EXCISING				**
c. COORDINATION / APPROVAL / DENIAL		X $25.00	=	
d. OTHER ACTIVITY				
6. EXECUTIVE HOURS *(0-7/GS/GM-16/ES 1 and above)*				
a. SEARCH				*
b. REVIEW / EXCISING		X $45.00	=	**
c. COORDINATION / APPROVAL / DENIAL				
7. COMPUTER SEARCH				
a. MACHINE HOURS				*
b. PROGRAMMER / OPERATOR TIME		X	=	
(1) Clerical		$12.00		*
(2) Professional		$25.00		*

	NUMBER (1)	RATE (2)		COST (3)
8. OFFICE COPY REPRODUCTION				
a. PAGES REPRODUCED		X .15	=	*
9. MICROFICHE REPRODUCTION				
a. MICROFICHE REPRODUCED		X .25	=	*

	TOTAL PAGES (1)	RATE (2)		COST (3)
10. PRINTED RECORDS				
a. FORMS				*
b. PUBLICATIONS		X .02	=	*
c. REPORTS				*

	NUMBER (1)	ACTUAL COST (2)		COST (3)
11. COMPUTER COPY				
a. TAPE				*
b. PRINTOUT		X	=	*
12. AUDIOVISUAL MATERIALS				
a. MATERIALS REPRODUCED		X	=	*

13. *For FOI Office Use Only*

a. SEARCH FEES PAID		f. TOTAL COLLECTABLE COSTS	
b. REVIEW FEES PAID		g. TOTAL PROCESSING COSTS	
c. COPY FEES PAID		h. TOTAL CHARGED	
d. TOTAL PAID		i. FEES WAIVED / REDUCED (X one)	[ ] Yes [ ] No
e. DATE PAID (YYMMDD)			

** Chargeable to all requesters after application of all waiver criteria.*

*** Chargeable only to commercial requesters.*

DD Form 2086, JUN 89 *Previous editions are obsolete.* 1015-158

BILLING CODE 3810-01-C

INSTRUCTIONS FOR COMPLETING DD FORM 2086

This form is used to record costs associated with the processing of a Freedom of Information request.

1. REQUEST NUMBER—First two digits will express Calendar Year followed by dash (—) and Component's request number, i.e. 87-001.

2. TYPE OF REQUEST—Mark the appropriate block to indicate initial request or appeal of a denial

3. DATE COMPLETED—Enter year, month and day. i.e., 870621.

4. CLERICAL HOURS—For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search—Time spent in locating from the files the requested information.

Review/Excising—Time spend reviewing the document content and determining if the entire entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.

Correspondence and Forms Preparation—Time spent in preparing the necessary correspondence and forms to answer the request.

Other Activity—Time spent in activity other than above, such as, duplicating documents, hand carrying documents to other locations, restoring files, etc.

—Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category.

5. PROFESSIONAL HOURS—For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising, and Other Activity—See explanation above.

Coordination/Approval/Denial—Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

—Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category.

6. EXECUTIVE HOURS—For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising—See explanation above.

Coordination/Approval/Denial—See explanation above.

—Multiply the time in the total hours column in each category by the hourly rate and enter the cost figures for each category.

7. COMPUTER SEARCH—Enter exact computer processing value in the total hours column. The salary scale (equating to items 4 and/or 5) for the programmer/operator executing the search will be recorded as part of the computer search cost, and entered in the appropriate block.

—Multiply the total hours by the hourly rates and enter the cost figures. Computer search will be based on direct cost of the Central Processing Unit, input/output devices, and memory capacity of the actual computer configuration used.

8. OFFICE COPY REPRODUCTION—Enter the number of pages reproduced.

—Multiply by the rate per copy and enter cost figures.

9. MICROFICHE REPRODUCTION—Enter the number of microfiche copies reproduced.

—Multiply by the rate per copy and enter cost figures.

10. PRINTED RECORDS—Enter total pages in each category. The categories are:

Forms (include any type of printed forms)

Publications (Include any type of bound document, such as directives, regulations, studies, etc.)

Reports (Include any type of memorandum, staff action paper, etc.)

—Multiply the total number of pages in each category by the rate per page and enter cost figures.

11. COMPUTER COPY—Enter the total number of tapes and/or printouts.

—Multiply by the actual cost per tape or printout and enter cost figures.

12. AUDIOVISUAL MATERIALS—Duplication cost is the actual cost of reproducing the material including the wage of the person doing the work.

13. FOR FOI OFFICE USE ONLY—

Search fees paid—Enter total search fees paid by the requester.

Review Fees Paid—Enter total review fees paid by the requester.

Copy Fees Paid—Enter the total of copy fees paid by the requester.

Total Paid—Add search fees paid and copy fees paid. Enter total in the total paid block.

Date Paid—Enter year, month and day, i.e., 871024, the fee payment was received.

Total Collectable Costs—Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Apply the appropriate waiver for the category of requester prior to inserting the final figure. Further discussion of chargeable fees is contained in Chapter VI of DoD Regualtion 5400.7-R.

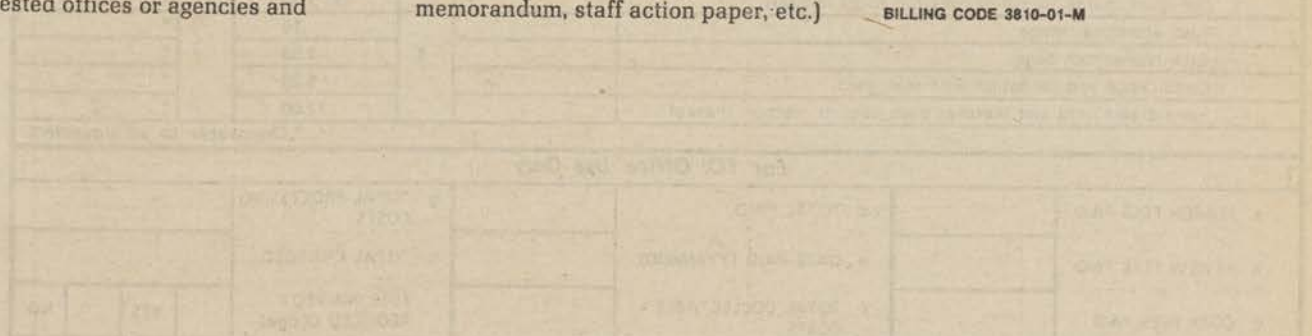
Total Processing Costs—Add all blocks in the cost column and enter total in the total prcessing cost block. The total processing cost in most cases will exceed the total collectable cost.

Total Charged—Enter the total amount that the requester was charged. taking into account the fee waiver threshold and fee waiver policy.

Fees Waived/Reduced—Indicate if the cost of processing the request was waived or reduced by placing an "X" in the "Yes" block or an "X" in the "No" block.

Appendix F to Part 286—Record of Freedom of Information (FOI) Processing Cost for Technical Data (DD Form 2086-1)

BILLING CODE 3810-01-M



RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST FOR TECHNICAL DATA

Please read instructions on reverse before completing form.

1. REQUEST NUMBER	2. TYPE OF REQUEST (X one)		3. DATE COMPLETED (YYMMDD)
	a. INITIAL	b. APPEAL	

4. CLERICAL HOURS (E-9/GS-8 and below)	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
a. SEARCH		X	$ 13.25	=	*
b. REVIEW/EXCISING		X	$ 13.25	=	*
c. CORRESPONDENCE AND FORMS PREPARATION		X	$ 13.25	=	
d. OTHER ACTIVITY		X	$ 13.25	=	
e. MINIMUM CHARGE			$ 8.30		

5. PROFESSIONAL HOURS (0-1 - 0-6/GS-9 - GS/GM-15)	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
a. SEARCH		X	ACTUAL HOURLY RATE	=	*
b. REVIEW/EXCISING		X	ACTUAL HOURLY RATE	=	*
c. COORDINATION/APPROVAL/DENIAL		X	ACTUAL HOURLY RATE	=	
d. OTHER ACTIVITY		X	ACTUAL HOURLY RATE	=	
e. MINIMUM CHARGE			1/2 HOURLY RATE		

6. EXECUTIVE HOURS (0-7/GS/GM-16/ES 1 and above)	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
a. SEARCH		X	ACTUAL HOURLY RATE	=	*
b. REVIEW EXCISING		X	ACTUAL HOURLY RATE	=	*
c. COORDINATION APPROVAL DENIAL		X	ACTUAL HOURLY RATE	=	
d. MINIMUM CHARGE			1/2 HOURLY RATE		

7. COMPUTER SEARCH	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
a. MACHINE HOURS		X		=	*
b. PROGRAMMER OPERATOR TIME					
- Clerical			$13.25 OR MINIMUM		*
- Professional			ACTUAL OR MINIMUM		*

8. REPRODUCTION	NUMBER (1)		RATE (2)		COST (3)
a. AERIAL PHOTOGRAPHS, SPECIFICATIONS, PERMITS, CHARTS, BLUEPRINTS, AND OTHER TECHNICAL DOCUMENTS			$ 2.50		*
b. ENGINEERING DATA (Microfilm)					
- Aperture cards					
-- Silver duplicate negative, per card		X	.75	=	*
-- When keypunched and verified, per card		X	.85	=	*
-- Diazo duplicate negative, per card		X	.65	=	*
-- When keypunched and verified, per card		X	.75	=	*
- 35 mm roll film, per frame		X	.50	=	*
- 16 mm roll film, per frame		X	.45	=	*
- Paper prints (engineering drawings), each		X	1.50	=	*
- Paper reprints of microfilm indices, each		X	.10	=	*
c. AUDIOVISUAL MATERIALS (Insert actual cost in block (2))					*
d. OTHER TECHNICAL DATA RECORDS					
Charges for any additional services not specifically provided above shall be made by components at the following rates:					
- Minimum charge for office copy (up to six images)			$ 3.50		*
- Each additional image		X	.10	=	*
- Each typewritten page		X	3.50	=	*
- Certification and validation with seal, each		X	5.20	=	*
- Hand-drawn plots and sketches, each hour or fraction thereof		X	12.00	=	*

* *Chargeable to all requesters.*

9. For FOI Office Use Only

a. SEARCH FEES PAID		d. TOTAL PAID		g. TOTAL PROCESSING COSTS				
b. REVIEW FEES PAID		e. DATE PAID (YYMMDD)		h. TOTAL CHARGED				
c. COPY FEES PAID		f. TOTAL COLLECTABLE COSTS		i. FEES WAIVED/ REDUCED (X one)		YES		NO

DD Form 2086-1, JUN 89

1044-158

BILLING CODE 3810-01-C

INSTRUCTIONS FOR COMPLETING DD FORM 2086–1

This form is used to record costs associated with the processing of a Freedom of Information request for technical data.

1. REQUEST NUMBER—First two digits will express Calendar Year followed by dash (—) and Component's request number, i.e., 87–001.

2. TYPE OF REQUEST—Mark the appropriate block to indicate initial request or appeal of a denial.

3. DATE COMPLETED—Enter year, month and day, i.e., 870621.

4. CLERICAL HOURS—For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search—Time spent in locating from the files the requested information.

Review/Excising—Time spent reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.

Correspondence and Forms Preparation—Time spent in preparing the necessary correspondence and forms to answer the request.

Other Activity—Time spent in activity other than above, such as, duplicating documents, hand carrying documents to other locations, restoring files, etc.

—Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Both search and review costs are chargeable to the requester.

5. PROFESSIONAL HOURS—For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising, and Other Activity—See explanation above.

Coordination/Approval/Denial—Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

—Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Both search and review costs are chargeable to the requester.

6. EXECUTIVE HOURS—For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising—See explanation above.

Coordination/Approval/Denial—See explanation above.

—Multiply the time in the total hours column in each category by the hourly rate and enter the cost figures for each category. Review costs are chargeable to the requester.

7. COMPUTER SEARCH—Enter exact computer processing value in the total hours column. The salary scale (equating to items 4 and/or 5) for the programmer/operator executing the search will be recorded as part of the computer search cost, and entered in the appropriate block.

—Multiply the total hours by the computer hourly rates and enter the cost figures. Computer search will be based on direct cost only of the Central Processing Unit, input/output devices, and memory capacity of the actual computer configuration used. This amount is fully chargeable to the requester.

8. REPRODUCTION—Enter the number of pages or items reproduced.

—Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester. Reproduction cost for audiovisual material is the actual cost of reproducing the material, including the wage of the person doing the work.

9. FOR FOI OFFICE USE ONLY—

Search Fees paid—Enter total search fees paid by the requester.

Review Fees Paid—Enter total review fees paid by the requester.

Copy Fees Paid—Enter the total of copy fees paid by the requester.

Total Paid—Add search fees paid and copy fees paid. Enter total in the total paid block.

Date Paid—Enter year, month and day, i.e., 871024, the fee payment was received.

Total Collectable Costs—Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Only search, reproduction and printed records are chargeable to the requester. Further discussion of collectable costs is contained in Chapter VI, Section 3, DoD Regulation 5400.7–R.

Total Processing Costs—Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

Total Charged—Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

Fees Waived/Reduced—Indicate if the cost of processing the request was waived or reduced by placing an 'X" in the "Yes" block or an "X" in the "No" block.

Appendix G to Part 286—Annual Report Freedom of Information Act (DD Form 2564)

BILLING CODE 3810-01-M

ANNUAL REPORT
FREEDOM OF INFORMATION ACT

REPORT CONTROL SYMBOL

1. INITIAL DETERMINATIONS

a. TOTAL REQUESTS	b. GRANTED IN FULL	c. DENIED IN PART	d. DENIED IN FULL	e. "OTHER REASONS"	f. TOTAL ACTIONS

2a. EXEMPTIONS INVOKED ON INITIAL DETERMINATIONS

(b) (1)	(b) (2)	(b) (3)	(b) (4)	(b) (5)	(b) (6)	(b) (7)	(b) (8)	(b) (9)	TOTAL

2b. (b)(3) STATUTES INVOKED ON INITIAL DETERMINATIONS *(Continue on separate sheet if necessary)*

(1) (b)(3) STATUTES CLAIMED	(2) NUMBER OF INSTANCES

2c. "OTHER REASONS" CITED ON INITIAL DETERMINATIONS

1	2	3	4	5	6	TOTAL

3. INITIAL DENIAL AUTHORITIES BY PARTICIPATION *(Continue on separate sheet if necessary)*

a. NAME *(Last, First, Middle Initial)*	b. RANK *(If Military)*	c. TITLE AND ORGANIZATION	d. NUMBER OF INSTANCES

4. APPEAL DETERMINATIONS

a. TOTAL REQUESTS	b. GRANTED IN FULL	c. DENIED IN PART	d. DENIED IN FULL	e. "OTHER REASONS"	f. TOTAL ACTIONS

5a. EXEMPTIONS INVOKED ON APPEAL DETERMINATIONS

(b) (1)	(b) (2)	(b) (3)	(b) (4)	(b) (5)	(b) (6)	(b) (7)	(b) (8)	(b) (9)	TOTAL

5b. (b)(3) STATUTES INVOKED ON APPEAL DETERMINATIONS *(Continue on separate sheet if necessary)*

(1) (b)(3) STATUTES CLAIMED	(2) NUMBER OF INSTANCES

5c. "OTHER REASONS" CITED ON APPEAL DETERMINATIONS

1	2	3	4	5	6	TOTAL

6. APPEAL DENIAL AUTHORITIES BY PARTICIPATION *(Continue on separate sheet if necessary)*

a. NAME *(Last, First, Middle Initial)*	b. RANK *(If Military)*	c. TITLE AND ORGANIZATION	d. NUMBER OF INSTANCES

DD Form 2564, AUG 90

348/240

7. COURT OPINIONS AND ACTIONS TAKEN *(Continue on separate sheet if necessary)*	

8. FREEDOM OF INFORMATION ACT IMPLEMENTATION RULES OR REGULATIONS *(Continue on separate sheet if necessary)*	

9. FEES COLLECTED FROM THE PUBLIC	
TOTAL AMOUNT COLLECTED FROM PUBLIC	$

10a. AVAILABILITY OF RECORDS *(Continue on separate sheet if necessary)*	

10b. FOI PROGRAM COSTS	
PERSONNEL COSTS	
A ESTIMATED MANYEARS	
B MANYEAR COSTS	$
C ESTIMATED MANHOUR COSTS BY CATEGORY	
(1) Search Time	$
(2) Review and Excising	$
(3) Coordination and Approval	$
(4) Correspondence Form Preparation	$
(5) Other Activities	$
(6) Total ((1) through (5))	$
D OVERHEAD ((B + C) x 25%)	$
E TOTAL (B through D)	$
II OTHER CASE-RELATED COSTS	
A COMPUTER SEARCH TIME	$
B OFFICE COPY REPRODUCTION	$
C MICROFICHE REPRODUCTION	$
D PRINTED RECORDS	$
E COMPUTER COPY	$
F AUDIOVISUAL MATERIALS	$
G OTHER	$
H SUBTOTAL (A through G)	$
OVERHEAD 25% x H)	$
TOTAL (H + I)	$
COST OF ROUTINE REQUESTS PROCESSED	$
V TOTAL COSTS (I through III)	$

10c. FORMAL TIME LIMIT EXTENSIONS				
(1) LOCATION	(2) VOLUME	(3) CONSULTATION	(4) COURT	(5) TOTAL

DD Form 2564 Reverse, AUG 90

BILLING CODE 3810-01-C

Appendix H to Part 286—DoD Freedom of Information Act Program Components

Office of the Secretary of Defense/ Chairman, Joint Chiefs of Staff and Joint Staff/Unified Commands, Defense Agencies, and the DoD Field Activities

Department of the Army
Department of the Navy
Department of the Air Force
Defense Communications Agency
Defense Contract Audit Agency
Defense Intelligence Agency
Defense Investigative Service
Defense Logistics Agency
Defense Mapping Agency
Defense Nuclear Agency
National Security Agency
Office of the Inspector General, Department of Defense

Dated: October 22, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-25289 Filed 10-25-90; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles/Long Beach Reg. 90-13]

Security Zone Regulations; Port Hueneme, CA

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone in Port Hueneme, California, around any vessels moored at Port Hueneme wharfs 3, 4, 5, and 6 during the effective period of these regulations. The zone is needed to safeguard vessels involved in military equipment outloads at Port Hueneme wharfs 3, 4, 5, and 6 against destruction, loss, or injury from sabotage or other subversive acts, accidents, or causes of a similar nature. Entry into this zone is prohibited unless authorized by the captain of the port.

EFFECTIVE DATE: This regulation becomes effective at 1 a.m., October 16, 1990. It terminates at 12 midnight, December 31, 1990.

FOR FURTHER INFORMATION CONTACT: Lt. R.F. Shields at (213) 499-5570.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent destruction, loss, or injury to vessels involved in military equipment outloads at Port Hueneme wharfs 3, 4, 5, and 6.

Drafting Information

The drafters of this regulation are Lt. R.F. Shields, project officer for the captain of the port, and LCdr. J.J. Jaskot, project attorney, Eleventh Coast Guard District Legal Office.

Discussion of Regulation

The incident requiring this regulation will begin 1 a.m., on October 16, 1990. This security zone is necessary to ensure the security of vessels involved in military equipment outloads at Port Hueneme wharfs 3, 4, 5, and 6.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart D of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 33 CFR 160.5.

2. A new § 165.T1114 is added to read as follows:

§ 165.T1114 Security Zone: Vessels moored at wharfs 3, 4, 5, and 6, Port Hueneme, California.

(a) *Location.* The following area is a security zone: The waters of Port Hueneme within 100 yards of any vessels moored at Port Hueneme wharfs 3, 4, 5, and 6.

(b) *Effective date:* This regulation becomes effective at 1 a.m., October 16, 1990. It terminates at 12 midnight, December 31, 1990.

(c) *Regulations:* In accordance with the general regulations in section 165.33 of this part, entry into this zone is prohibited unless authorized by the captain of the port. Section 165.33 also contains other general requirements.

Dated: October 22, 1990.

J.B. Morris,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles/Long Beach.

[FR Doc. 90-25388 Filed 10-25-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[COTP Duluth, MN Regulation 90-01]

Safety Zone Regulations; Lake Superior—Talmadge, MN

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone around a number of sunken barrels in Lake Superior from the lake bottom up to 50 feet above the bottom. The zone is needed to protect the area from unauthorized entry and agitation. A potential safety hazard exists if anyone attempts to salvage or recover the barrels. All persons are prohibited from either entering this zone or placing any object in this zone unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective on 0001 hours 18 October 1990. It terminates at 2400 31 December 1990 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: Lt. J.C. Hillerns, Marine Safety Office, Canal Park, Duluth, MN 55802 at (218) 720-5286.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to insure safety of life and property and to prevent possible disturbance of the site involved.

Drafting Information

The drafter of this regulation is Lt. J.C. Hillerns, Project Officer for the Captain of the Port.

Discussion of Regulation

The circumstances requiring this regulation result from the possible presence of hazardous materials contained in or around more than 1,400 steel barrels which were dumped under a federal government permit in Lake Superior from 1959 to 1961. The barrels reportedly contained inert scrap metal parts from classified bomb-making operations, and were weighted with concrete. Over the years, allegations have persisted which indicate that dangerous chemicals or radioactive materials are contained in the barrels. Although official records do not confirm this, the U.S. Army Corps of Engineers has undertaken the task of locating the

barrels, and recovering some for testing of the contents.

A preliminary search located a string of barrels in a 2,000 foot line approximately 2,300 yards offshore from Talmadge, MN at a depth of 170–200 feet. The District Engineer, St. Paul District, U.S. Army Corps of Engineers has requested that access to this area be restricted for safety reasons until the operation is completed. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

Federalism

This action has been analyzed in accordance with the principals and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary and the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities. This section is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1 and 160.5.

2. A new § 165.T0924 is added to read as follows:

§ 165.T0924 Safety zone: Lake Superior—Talmadge, MN.

(a) *Location.* The following area is a Safety Zone: In the vicinity offshore from Talmadge, MN an area from the bottom of the lake up to 50 feet above the bottom, bounded by the following coordinates: (a) 91–54.6W, 46–52.9N; (b) 91–53.3W, 46–52.3N; (c) 91–55.7W, 46–51.0N; (d) 91–57.0W, 46–51.7N and back to the starting position.

(b) *Effective dates.* This regulation became effective at 0001 hours on October 18, 1990. It terminates at 2400 December 31, 1990, unless sooner terminated by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part. All persons are prohibited from either entering this zone or placing any object in this zone unless authorized by the Captain of the Port.

(2) Persons desiring to enter the safety zone may do so only with prior approval of the Captain of the Port, Duluth, MN.

Dated: 17 October 1990.

C.A. Fust,

Commander, U.S. Coast Guard Captain of the Port, U.S. Coast Guard, Duluth, MN.

[FR Doc. 90–25389 Filed 10–25–90; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 4

RIN 2900–AE68

Claims Based on Service in Vietnam

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending its adjudication regulations to establish criteria to be followed in considering claims for service connection for non-Hodgkin's lymphoma (NHL) by veterans who served in Vietnam during the Vietnam Era. VA has also amended the Schedule for Rating Disabilities to add a specific diagnostic code for NHL as well as evaluation criteria. These changes are necessary to implement a decision by the Secretary based on the results of a study of the association of selected cancers with service in the U.S. military in Vietnam by the Centers for Disease Control (CDC). The intended effect will be to establish a rule for making determinations regarding service connection for NHL for veterans with Vietnam service and specific criteria for rating NHL.

DATES: The amendment to part 3 is effective August 5, 1964. The amendment to part 4 is effective October 26, 1990.

FOR FURTHER INFORMATION CONTRACT: Joel Drembus, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: On pages 25339–25340 of the **Federal Register** of June 21, 1990, VA published a proposal to amend part 3 by adding a new section and to amend part 4 by adding a new diagnostic code. Interested persons were invited to submit comments, suggestions, or objections by July 23, 1990. Four comments were received.

One individual objected to the Secretary's decision to service-connect NHL, stating it represented a total abuse of the Secretary's authority under 38 U.S.C. 210(c).

VA does not concur. The Secretary has broad rulemaking authority under 38 U.S.C. 210(c)(1), which provides that the Secretary has the authority to make all rules and regulations which are necessary or appropriate to carry out the laws administered by VA and are consistent therewith, including regulations "with respect to the nature and extent of proofs and evidence." This authority is broad enough to encompass establishment of service connection on predetermined bases. In this case, the Secretary has determined that proof of service in Vietnam during the Vietnam era and the subsequent development of NHL is sufficient evidence to establish that the resulting disability was incurred in the line of duty in the active military, naval, or air service, i.e., that such evidence meets the criteria for establishment of service connection. See 38 U.S.C. 310.

Another individual objected to the portion of the VA General Counsel advisory opinion of May 1, 1990, which held that VA may authorize payment to claimants whose claims were previously denied based on the dates that the prior claims were submitted. The commenter stated it is not equitable to financially punish veterans who had not filed claims prior to March 29, 1990, the date the Secretary announced his decision to service-connect NHL, and suggested that payment be authorized based on the date of diagnosis rather than the date of claim.

VA does not concur. The law (38 U.S.C. 3001(a)) provides that a specific claim must be filed in order for benefits to be paid or furnished to any individual under laws administered by VA, and 38 U.S.C. 3010(a) provides that the effective date of compensation shall be fixed in accordance with the facts found, but generally shall not be earlier than the date of receipt of applicant therefor.

The same commenter objected to the proposed rating criteria for NHL in part 4, stating that in comments to the press after his announcement on March 29, 1990, the Secretary was quoted as saying a veteran with NHL "will be considered 100% disabled and will be paid full benefits for the rest of his life." The commenter suggested that the rating criteria for NHL be revised to implement the Secretary's comment.

VA does not concur. At the Secretary's press conference of March 29, 1990, both the Secretary and the Director of the Compensation and Pension Service stated that VA was assuming that veterans with NHL would be 100% disabled. That assumption was used to establish VA's initial cost estimates, but there was no indication that NHL would necessarily warrant a permanent 100% evaluation. The Schedule for Rating Disabilities provides that malignancies be rated based on residual disability at some point following surgery or the cessation of radiation treatment, chemotherapy, etc. The rating schedule is a guide in the evaluation of disability resulting from diseases or injuries. The law (38 U.S.C. 355) requires that the percentage ratings represent, as far as can practically be determined, the average impairment in earning capacity resulting from such diseases and injuries and their residual conditions. To rate NHL we will use rating criteria identical to that used for Hodgkin's disease, a medically similar condition.

Three commenters objected to the proposed effective date of the new section of part 3. One Congressman forwarded the same or similar letters from 14 constituents, all requesting that the date be changed from August 5, 1964 to February 1, 1961, when the use of herbicides in Vietnam began.

VA does not concur. Since the Secretary's decision, and the CDC study on which it was based, noted an increased risk of developing NHL based on service in Vietnam during the Vietnam era rather than exposure to herbicides containing dioxin, there is no basis for establishing an effective date prior to August 5, 1964, the beginning date of the Vietnam era.

One individual questioned the rationale for making the effective date earlier than the date of the CDC study upon which the Secretary's decision was based.

There is no requirement that an effective date in a situation such as this cannot be earlier than the date on which a particular study was released, nor has the commenter cited any authority imposing such a requirement. The Secretary's decision to establish August 5, 1964—the beginning of the Vietnam era (38 U.S.C. 101(29))—as the effective date was an exercise of his discretion premised on a study which found an increased risk of developing NHL based on service in Vietnam during a portion of the Vietnam era. This decision is fully consistent with VA's longstanding policy to administer the law under a broad interpretation for the benefit of veterans and their dependents. (38 CFR 3.102.)

The Chairman and the Ranking Minority Member of the House Committee on Veterans' Affairs stated that, despite a VA General Counsel advisory opinion of May 1, 1990, they find it difficult to reconcile a retroactive effective date with existing law and VA regulations.

The cited General Counsel opinion noted that rulemaking is generally subject to the provisions of the Administrative Procedures Act (APA) and concluded that the APA does not bar the adoption of a retroactive rule which grants benefits or liberalizes a restriction. In accordance with VA's defined and consistently applied policy of administering title 38, United States Code, under a broad interpretation for the benefit of veterans and their dependents, the opinion further concluded that current law and VA regulations do not present an obstacle to the retroactive application of a regulation with a retroactive effective date to previously denied claims. In particular, the General Counsel stated that 38 U.S.C. 3010(g) provides an exception to the finality provisions of 38 U.S.C. 4004(b) and 4005(c) and authorizes a fresh look at a disallowed claim, even in the absence of new and material evidence, when a statute or regulation liberalizes burdens of proof. VA respectfully submits that the General Counsel advisory opinion does, in fact, legally justify the Secretary's decision to establish a retroactive effective date for § 3.313.

We appreciate the comments and suggestions of those who responded to publication of the proposed regulations which are adopted without change.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that these regulatory amendments are non-major for the following reasons:

(1) They will not have an annual effect on the economy of $100 million or more.

(2) They will not cause a major increase in costs or prices.

(3) They will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects

38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

38 CFR Part 4

Handicapped, Pensions, Veterans.

Catalog of Federal Domestic Assistance program numbers are 64.101, 64.109, and 64.110

Approved: October 2, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 3, Adjudication, is amended by adding § 3.313 and its authority citation to read as follows:

§ 3.313 Claims based on service in Vietnam.

(a) *Service in Vietnam.* "Service in Vietnam" includes service in the waters offshore, or service in other locations if the conditions of service involved duty or visitation in Vietnam.

(b) *Service connection based on service in Vietnam.* Service in Vietnam during the Vietnam Era together with the development of non-Hodgkin's lymphoma manifested subsequent to such service is sufficient to establish service connection for that disease.

(Authority: 38 U.S.C. 210(c)(1))

1. In 38 CFR Part 4, Schedule for Rating Disabilities, § 4.117 is amended by adding diagnostic code 7715 and its authority citation after diagnostic code 7714 to read as follows:

§ 4.117 Schedule of ratings—hemic and lymphatic systems.

* * * * *

7715 Non-Hodgkin's lymphoma.
Rate as for lymphogranulomatosis (Hodgkin's disease).

(Authority: 38 U.S.C. 355)

[FR Doc. 90-25288 Filed 10-25-90; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL 3854-8]

Redesignation of Areas for Air Quality Planning Purposes; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving a change of the ozone designation for Macoupin County from nonattainment to attainment. The revision is based on a request from the State of Illinois to redesignate this area on the supporting data the State submitted. Under the Clean Air Act (Act), designations can be changed if sufficient data are available to warrant such change.

DATES: This action will be effective November 26, 1990, unless notice is received by November 26, 1990, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following address.

United States Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Comments on this rulemaking should be addressed to:

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Air and Radiation Branch (5AR-26), United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-1767.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Act, the Administrator of USEPA has promulgated the National Ambient Air Quality Standards (NAAQS) attainment status for each of every State. For Illinois, see 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These area designations may be revised whenever the data warrant. On May 28, 1987, the Illinois Environmental Protection Agency (IEPA) submitted a request for the redesignation of Macoupin County, Illinois to attainment of the NAAQS for ozone. The redesignation request was accompanied by a report containing information supporting the redesignation request.

Ozone Redesignation Policy

USEPA's ozone redesignation policy is summarized in the following USEPA policy memoranda:

1. December 7, 1979, from Richard G. Rhoads to the Directors of Air and Hazardous Materials Divisions, Subject: Criteria for Ozone Redesignations Under section 107.

2. April 21, 1983, from Sheldon Meyers to Directors of Air and Radiation Divisions, subject: Section 107 Designation Policy Summary.

3. December 23, 1983, from G.T. Helms to Chiefs of Air Programs Branches, Region I-X, subject: Section 107 Questions and Answers.

4. April 6, 1987, from Gerald A. Emison, Director, Office of Air Quality Planning and Standards, to Regional Air Directors, which includes a March 16, 1987, letter from David Kee, Director, Region V, Air and Radiation Division, to Robert P. Miller, Chief, Air Quality Division, Michigan Department of Natural Resources, subject: Ozone Redesignation Policy.

A discussion of the ozone redesignation policy as applicable to Macoupin County is contained in USEPA's July 6, 1987, technical support document, which is available at the Region V office listed above.

Data Supporting the Requested Redesignation

IEPA's redesignation request for Macoupin County was based on ambient data showing no violation of the ozone standard during the period of 1984 through 1986 and on IEPA's determination that all stationary volatile organic compound (VOC) sources were in compliance with applicable Reasonably Available Control Technology (RACT) regulations.

A. Air Quality Data

Ozone is monitored at a single site (Nilwood) in Macoupin County. During the period of 1984-1986, the data recorded at this monitor indicated no violation of the standard. In addition, USEPA reviewed the most recent years of data, 1987-1989, which also indicated no violation of the standard.

B. Ozone Emission Control Measures

The IEPA points out that Macoupin County is a rural area with a 1985 population of 50,018 and few stationary sources of VOC. Only 14 stationary VOC sources are noted in the State's emissions inventory system for the County. The inventory does not list any of these sources as "major", with all emitting less than 100 tons of VOC per year.

USEPA Evaluation and Rulemaking Action

Review of the ozone data on file in USEPA's National Areometric Data Bank confirms that no monitored violation of the ozone standard occurred in Macoupin County during the 1984-1989 period. In addition, USEPA verified that there is evidence of an implemented ozone SIP that has been fully approved by USEPA, that RACT rules are in place for applicable sources, and that all stationary sources of VOC are in compliance with RACT rules. Therefore, at the request of the State of Illinois, USEPA is redesignating Macoupin County to attainment of the ozone NAAQS.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on (60 days from the date of this notice) that someone wishes to submit critical comments, then USEPA will publish:

(1) A notice that withdraws the action, and

(2) A notice that begins a new rulemaking proposing the action and establishing a comment period.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for redesignation. Each request for redesignation shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Today's action is contingent upon the State and/or county maintaining an adequate ozone ambient air quality monitoring network and continuing full implementation of their nonattainment plan. Under the reasoning of Bethlehem Steel Corp. vs. USEPA, 723 F.2d 1304 (7th Cir. 1983), USEPA believes that it may not have the authority to redesignate an area to nonattainment without first receiving a request to do so from the affected state. Therefore USEPA anticipates that should violations of the ozone NAAQS occur in the future, the state will request that USEPA redesignate the area nonattainment. Also, this redesignation does not in any way relieve sources from their obligation to meet all applicable requirements of the approved

ozone nonattainment plans (SIPs), nor does it authorize the State and/or county to delete or relax RACT emission limiting regulations. Changes to ozone SIP VOC regulations rendering them less stringent than those contained in the USEPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by USEPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation (section 173(b) of the Act) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the Act.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12191 for a period of 2 years.

Under 5 U.S.C. section 605(b), I certify that this redesignation will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 26, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

List of Subjects in 40 CFR Part 81

Air pollution control, Environmental protection, Ozone, Intergovernmental relations.

Dated: August 9, 1990.

John R. Kelly,

Acting Regional Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PURPOSES—ILLINOIS

Part 81 of chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation of part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642, unless otherwise noted.

2. Within § 81.314—Illinois, the ozone table is amended by revising the entry for "Macoupin County" to read as follows:

§ 81.314 Illinois

Illinois—Ozone (0_3)

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
* * * * *		
Macoupin County.	----------	X
* * * * *		

[FR Doc. 90–25398 Filed 10–25–90; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 81

[FRL–3855–3]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: USEPA is approving a change of the carbon monoxide (CO) designation for the Chicago CO nonattainment areas from nonattainment to attainment. The revisions are based on a request from the State of Illinois to redesignate these areas and on the supporting data the State submitted. Under the Clean Air Act (Act), designations can be changed if sufficient data are available to warrant such change.

DATES: USEPA's approval will be effective December 26, 1990, unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

United States Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604.

Comments on this rulemaking should be addressed to:

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: William Jones, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–6058.

SUPPLEMENTARY INFORMATION: Under section 107(d) of the Act, the Administrator of USEPA has promulgated the National Ambient Air Quality Standard (NAAQS) attainment status for each area of every State, including CO.[1] For Illinois, see 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These area designations may be revised whenever the data warrant. On November 3, 1987, the Illinois Environmental Protection Agency (IEPA) submitted a request for the redesignation of the entire Chicago area to attainment of the NAAQS for CO.[2] The redesignation request was accompanied by a report containing information supporting the redesignation request.

CO Redesignation Policy

USEPA's current redesignation policy for CO may be found in three policy memoranda: June 12, 1979, from Richard G. Rhoads, to Directors of Air and Hazardous Materials Divisions, Region I–X, Subject: Section 107 Redesignation Criteria; April 21, 1983, from Sheldon Meyers, to Directors of Air Division, Regions I–X, Subject: Section 107 Designation Policy Summary; and December 23, 1983, from G.T. Helms, to Air Branch Chiefs, Regions I–X, Subject: Section 107 Questions and Answers.

Data Supporting the Requested Redesignation

In support of the redesignation request, the IEPA submitted a report addressing the current status of CO levels in the Chicago area; in particular, in the designated CO nonattainment areas. This report was accompanied by related documents and supplemental data reports. Detailed information on this data is contained in USEPA's

[1] The NAAQS for CO is defined (40 CFR part 50) to be 35 parts per million (ppm), 1-hour average, or 9 ppm, 8-hour average, neither of which is to be exceeded more than once per year. As discussed in a May 27, 1983, memorandum from Richard G. Rhoads to Gary L. O'Neal, Subject: "Summary of NAAQS Interpretation," the 8-hour concentrations are to be based on running 8-hour averages, with the convention that a monitored violation of the NAAQS requires at least two non-overlapping 8-hour averages above the level of the 9 ppm standard.

[2] There are three designated nonattainmen subareas within the greater Chicago area. One nonattainment area is defined to be the core area of Chicago. This area is bounded by Lake Shore Drive on the east, Roosevelt Road on the south, Halstead Street on the west, and Lake Street and Wacker Drive on the north. The other two nonattainment areas are centered on the Dan Ryan Expressway between 71st and 75th Streets, and between 47th and 55th Streets. The specific boundaries of the Dan Ryan Expressway nonattainment areas are not discussed in 40 CFR part 81. The report submitted with the redesignation request, however, states that these nonattainment areas may be thought of as including the expressway itself and the area within 100 feet of the roadway edges. All the remainder of the city is designated attainment for CO.

February 10, 1988, Technical Support Document, which is available at the Region V Office listed above.

A. Air Quality Data

There have been no monitored violations of the CO NAAQS in the Chicago area during the most recent 2 complete years of monitoring. The redesignation requested addressed the available 1987 CO data for the 160 North LaSalle monitor, the only monitor in the Chicago area which has recorded recent exceedances. Through July 1987, the monitor recorded only one exceedance of 10.0 ppm. Subsequent data indicate that no further exceedances of the 8-hour standard (9 ppm), or of the 1-hour standard have been observed anywhere in the Chicago area. Therefore, USEPA has concluded that no violations of the CO NAAQS are currently being monitored in the Chicago area.

B. Modeling Results

Based on CO dispersion modeling conducted for Illinois' 1982 CO State Implementation Plan (SIP) revision, IEPA determined that only the two areas along the Dan Ryan Expressway (those areas currently designated as nonattainment) and the urban core area should experience CO standards violations after 1982. Modeling showed that the Dan Ryan Expressway areas should come into attainment of the CO NAAQS by the end of 1985. Additional post-SIP revision CO dispersion modeling conducted in 1984 confirmed this result. Attainment of the NAAQS was expected to occur without the implementation of any further emission controls beyond the Federal Motor Vehicle Control Program (FMVCP). The modeling shows all modeled locations to be in attainment of the CO NAAQS in 1987.

In addition to CO dispersion modeling, the redesignation request includes a description of a CO emission linear rollback analysis conducted for the urban core, the Central Business District (CBD) of Chicago. Using a 1982 CO design value of 14.5 ppm (8-hour average), the MOBILE 3 emissions factor model, and a linear rollback approach, CO design values were projected for the CBD through 1990. The CO standards were shown to be attained in 1986, with or without a vehicle Inspection/Maintenance (I/M) program.[3]

[3] An I/M program is required under part D for all areas where the State determines and USEPA agrees that an area cannot meet either the ozone and/or CO NAAQS by the statutory deadline of 1982, despite the implementation of all reasonably available control measures. In the case of the Chicago area, Illinois made such a finding for both ozone and CO, USEPA approved it, and USEPA granted an extension for attainment of both the ozone and CO standards in the Chicago area until 1987. Therefore, an I/M program is required for the Chicago area.

Attainment of the CO NAAQS was shown to be maintained in the CBD through 1990.

C. CO Emission Control Measures

The primary CO emissions control measure relied on by the IEPA was the FMVCP. This control measure alone has been shown to be sufficient to bring about attainment of the CO NAAQS by December 31, 1987, in the entire Chicago area and by 1986 in the CBD. Illinois implemented a vehicle I/M program in the Chicago urban area in May 1986. This program has added to the emission reductions produced by the FMVCP to further reduce CO emissions below the attainment level.

The redesignation request also states that Transportation Control Measures (TCMs) were discussed in the SIP. It was noted that the State's TCMs are fully implemented, and the planned reduction in emissions achieved. In a separate rulemaking published on October 4, 1990 (55 FR 40658), USEPA approved the State's CO plan, including the TCMs and the vehicle I/M program, which are both parts of both the Illinois CO plan and its Ozone plan.

USEPA Evaluation and Rulemaking Action

The redesignation request submitted by the State of Illinois on November 3, 1987, meets USEPA's redesignation policy for redesignating areas to attainment in that it: (1) Indicates that all monitoring data currently show attainment of the NAAQS; (2) shows that reductions in CO emissions support the observed improvement in monitored CO air quality or modelled attainment of the NAAQS; (3) shows maintenance of the NAAQS in the previously monitored nonattainment area (the CBD). As noted above, USEPA approved the State's CO plan, including the TCMs and the vehicle inspection and maintenance program, on October 4, 1990 (55 FR 40658). At the request of the State of Illinois, USEPA is redesignating the Chicago CO nonattainment areas to attainment of the CO NAAQS.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on (60 days from the date of this notice). However, if we receive notice by (30 days from the date of this notice) that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking proposing the action and establishing a comment period.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years.

Under 5 U.S.C. section 605(b), I certify that this redesignation will not have a significant economic impact on a substantial number of small entities.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 26, 1990. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Air pollution control, Environmental Protection, Carbon monoxide, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.

Dated: October 3rd, 1990.

Valdas V. Adamkus,

Regional Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PURPOSES—ILLINOIS

Part 81 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation of part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642, unless otherwise noted.

2. Within § 81.314—Illinois, the CO table is amended by revising the entry for "Cook County" to read as follows:

§ 81.314 Illinois.

Illinois—CO

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
* * * * *		
Cook County	X	
* * * * *		

[FR Doc. 90-25400 Filed 10-25-90; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3855-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for a specific solid waste generated by Philway Products, Incorporated, Ashland, Ohio. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 268, 124, 270, and 271 of title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: October 26, 1990.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW. (room M2427), Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-90-PHEF-FFFFF". The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4782.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that:

(1) The waste to be excluded is not hazardous based upon the criteria for which it was listed, and

(2) No other hazardous constituents are present in the waste at levels of regulatory concern.

B. History of this Rulemaking

Philway Products, Incorporated (Philway), located in Ashland, Ohio, petitioned the Agency to exclude its filter press sludge from hazardous waste regulation. After evaluating the petition, EPA proposed, on October 27, 1989, to exclude Philway's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 54 FR 43829).

This rulemaking addresses public comments received on the proposal and finalizes the proposed decision to grant Philway's petition.

II. Disposition of Delisting Petition

Philway Products, Incorporated, Ashland, Ohio.

1. Proposed Exclusion

Philway petitioned the Agency for an exclusion of its filter press sludge generated during the treatment of electroplating wastewaters, presently listed as EPA Hazardous Waste No. F006—"Wastewater, treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum". The listed constituents for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and complexed cyanide (see 40 CFR part 261, appendix VII).

Philway petitioned to exclude its waste bacause it does not believe that the waste meets the criteria of the listing. Philway also believes that the waste does not contain appreciable amounts of the listed constituents. To support its claim that the concentrations of hazardous constituents in the filter press sludge are not above levels of regulatory concern, Philway submitted:

(1) A detailed description of the manufacturing and treatment processes used in the fabrication of printed circuit boards;

(2) A list of raw materials and material safety data sheets (MSDSs) for tradename materials used in its manufacturing and treatment processes;

(3) Results from total constituent and EP leachate analyses for the EP toxic metals and nickel on representative samples of the waste;

(4) Results from total constituent analyses for cyanide on representative samples of the waste;

(5) Results from total constituent analyses for acetone, acrylamide, formaldehyde, methylene chloride, thiourea, toluene, 1,1,1-trichloroethane, trichloroethylene, and xylene on representative samples of the waste;

(6) Results from total oil and greases analyses; and

(7) Test data and explanations regarding the characteristics of ignitability, corrosivity, and reactivity.

The Agency evaluated the information and analytical data provided by Philway in support of its petition and determined that the hazardous constituents found in the petitioned waste would not pose a threat to human health and the environment. Specifically, the Agency used its vertical and horizontal spread (VHS) model to predict the potential mobility of the hazardous constituents found in the petitioned waste. Based on this evaluation, the Agency determined that the hazardous constituents in Philway's waste would not leach and migrate at concentrations above the Agency's health-based levels used in delisting decision-making. See 54 FR 43829, October 27, 1989, for a more detailed explanation on EPA's proposed rule to grant Philway's petition for its filter press sludge.

2. Agency Response to Public Comments

The Agency received comments on the proposed rule from one interested party. This commenter opposed the Agency's proposed decision to exclude Philway's filter press sludge. The comments noted the Agency's failure to: (1) Evaluate total constituent levels of metals in the waste, (2) consider alternative disposal scenarios, (3) consider the probable high alkalinity of Philway's petitioned waste, and (4) consider the recently proposed drinking water standard for lead. These comments are discussed below, along with the Agency's responses.

Evaluation of Total Constituent Levels of Metals

The commenter claimed that Philway has failed to demonstrate that its F006 waste is not capable of posing a hazard to human health or the environment. In particular, the commenter emphasized that the maximum total constituent concentration of lead in Philway's filter press sludge is 3,200 ppm, which is greater than the "significant concentration" of 1,000 ppm for toxic metals referred to by the Agency in its background document for the listing of F006 wastes.

The Agency agrees that the presence of significant concentrations of hazardous inorganic constituents in F006 wastes was one of the reasons for listing F006 wastes as "T" (toxic) wastes. See 40 CFR 261.11(a)(3)(ii) and the "Background Document, Resources Conservation and Recovery Act, Subtitle C, Hazardous Waste Management, Section 3001, Identification and Listing of Hazardous Waste—Electroplating and Metal Finishing Operations," 1980. The data presented in the Background Document broadly characterize the physical/chemical nature of a wide variety of electroplating wastes. However, the Agency believes that these data are not representative of the physical/chemical nature of the treated wastes generated by Philway. Specifically, EPA believes it is reasonable to expect that, as the total constituent concentration of an unbound or loosely bound metal present in a waste increases, the potential for the metal to leach from the waste also increases. (Generally, the higher the total constituent concentration of an unbound or loosely bound metal, the higher the potential EP leachate concentration.) Thus, wastes having significant total constituent concentrations of unbound or loosely bound metals are more likely to impact the underlying ground water than wastes having lower total constituent concentrations of unbound or loosely bound metals. In this case, however, the metals in Philway's petitioned waste are tightly bound within the waste matrix. The Agency's conclusion that the inorganic constituents of concern, including lead, are bound in the waste matrix and are unavailable for leaching is supported by the results of the EP leachate analyses of Philway's petitioned waste. See the proposed rule (54 FR 43829, October 27, 1989) for the EP leachate results.

EPA evaluated the potential mobility of Philway's petitioned waste using the maximum EP leachate concentrations as inputs into the VHS model. The VHS model predicts a dilution factor of approximately 32.3 for the estimated maximum volume of waste generated by Philway (96 cubic yards per year). The VHS model analysis provides a conservative and reasonable worst-case evaluation of the waste's impact on the underlying aquifer. The predicted compliance-point concentrations resulting from this conservative analysis were below the levels of concern used for delisting purposes. See 54 FR 43829, October 27, 1989, for a description of the modeling analysis of Philway's filter press sludge. Thus, the Agency believes that the levels of the metals present in Philway's petitioned waste should not pose a threat to either human health or the environment.

Furthermore, in delisting evaluations, EPA considers all factors that could cause a waste to be hazardous. The Agency considers both factors for which the waste was listed and additional factors (such as other constituents), other than those for which the waste was originally listed, that could cause the waste to be hazardous (see 40 CFR 260.22(a) and 42 U.S.C. 6921(f)). For Philway's petitioned waste, based on the discussions presented above and in the proposed rule, EPA does not believe that any other factors, including total concentrations of the listed and non-listed inorganic constituents of concern, could cause this waste to present a hazard to human health and the environment.

Consideration of Alternative Disposal Scenarios

The commenter also stated that the Agency, in its reliance on the VHS model, has focused solely on the leaching potential of hazardous constituents in a landfill setting and has not evaluated other plausible, non-ground water mismanagement scenarios. The commenter believed that, if the waste were delisted, the waste could be improperly managed during transport for off-site disposal, or inadequately handled prior to disposal. As such, there could be opportunities for airborne and waterborne dispersal resulting in human and environmental exposure. The commenter thus claimed that focusing on leachable constituents has resulted in a serious underestimation of the risks posed by non-ground water exposure routes that could result from mismanagement prior to disposal.

The Agency disagrees with the commenter that use of the VHS model for the prediction of hazardous constituents migration in the ground water has underestimated the potential hazard posed to human health and the environment by Philway's petitioned waste. The Agency believes that direct contact from airborne exposure to hazardous constituents from Philway's petitioned waste is unlikely because the waste has an average moisture content of 78.5 percent. The Agency believes that the petitioned waste's moisture content is sufficient to prevent dust formation and dispersion. Although EPA does not believe that exposure to hazardous airborne contaminants from Philway's waste is likely to present a hazard to human health or the environment, the Agency, in order to fully respond to the specific comment, evaluated the hazards resulting from such an exposure to Philway's waste. Specifically, EPA used the methodology documented in "Rapid Assessment of Exposure to Particulate Emissions from Surface Contamination Sites," U.S. Environmental Protection Agency, Office of Health and Environmental Assessment, EPA/600/8–85/002, February 1985, to estimate repirable particulate emissions from wind erosion of surfaces with an "unlimited reservoir" of erodible particles. The worst-case emission rate derived from this methodology then was used as an input to the Agency's Ambient Air Dispersion Model (AADM), a steady-state Gaussian plume dispersion model, to predict the concentrations of the inorganic constituents 1,000 feet downwind of the facility. For a complete description and discussion of the AADM, see 50 FR 48963, November 27, 1985.

In this specific analysis, the Agency assumed conservative values for all variables likely to influence potential soil erosion, including wind velocity and vegetation. The Agency, however, modified the assumptions regarding unit dimensions used in the AADM to more closely resemble a landfill as used in the VHS model. The results of this reasonable, worst-case analysis indicated that no substantial present or potential hazard to human health or the environment is likely from airborne exposure to both the listed and non-listed inorganic constituents from Philway's waste. (The results of the Agency's modeling and analysis of air emissoins from Philway's waste is available in the docket for today's final rule.)

With regard to waterborne dispersal, the Agency acknowledges that it may be possible for surface water runoff (*i.e.*, rainwater, leachate, or other liquid) to transport hazardous constituents from a waste disposal are to a nearby surface water body. However, the Agency does not believe that analysis of such

overland transport of hazardous constituents as an exposure route for the petitioned waste would indicate a different result for this petition. As described in the proposed rule, the Agency believes that disposal in a landfill is a reasonable worst-case management scenario for Philway's petitioned waste. Contamination of surface water might occur, therefore, through runoff from the waste disposal area. However, EPA believes that the concentrations of any hazardous constituents in that runoff will tend to be lower than the levels indicated by the EP leachate analyses, reported in the proposed rule, due to the acidic medium and extended testing period (24 hours) used in the EP toxicity test. Furthermore, any transported constituents would be further diluted in the surface water body.

Finally, the Agency believes that, in general, the leachate derived from this waste will not directly enter a surface water body without first travelling through the saturated (subsurface) zone where dilution and attenuation of hazardous constituents may occur. The VHS model takes this saturated zone into account as it predicts the ultimate fate and transport of hazardous constituents.

The Agency notes that, once delisted, the petitioned waste remains a solid waste (as defined under 40 CFR 261.2) and is subject to regulation under the State solid waste management program. Philway must either dispose of the delisted waste on site, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

Consideration of the Alkalinity of Philway's Petitioned Waste

The commenter explained that common forms of lead are amphoteric and may be solubilized by alkaline as well as acidic media. Because the petitioned waste itself is alkaline due to the presence of lime, the lead present may be solubilized over time. The commenter further stated that the Agency only required Philway to submit the results of the EP toxicity test, an acidic leaching procedure. The commenter believed that leaching the waste with distilled water or by the Multiple Extraction Procedure (MEP) would have yielded higher concentrations of lead in the extract.

In support of this contention, the commenter cited the results of a column leaching study of municipal solid waste incinerator ash treated with Portland cement.[1] The experimenters observed initially low leachability but then a sharp increase to 9–15 ppm of lead, as the alkalinity of the extraction fluid resulted in the solubilization of the lead present in the incinerator ash. The commenter also noted that while discussing treatment options for certain wastes subject to the land disposal restrictions (see 54 FR 1101, January 11, 1989), the Agency indicated that the attempted stabilization of K031 wastes using Portland cement actually increased arsenic leaching and that this increase was attributable to the amphoteric nature of arsenic compounds.

The Agency disagrees with these comments. The Agency believes the EP leaching test is an appropriate method to use to evaluate the plausible worst-case assumption that the delisted waste might be co-disposed with municipal solid wastes. An acidic leaching medium, such as employed in the EP, simulates the acidic conditions expected to be present in a municipal landfill due to the formation of organic acids from the decay of organic wastes. To simulate the acidic leaching medium which occurs in actively decomposing municipal landfills, the Agency chose to employ an acetic acid leaching medium with a pH of 5.0. (See 45 FR 33084, May 19, 1980.)

The Agency further notes that even if the petitioned waste were managed in an on-site landfill or surface impoundment, or in a dedicated off-site unit, it would still be subject to acidic leaching. The pH of rainwater in equilibrium with atmospheric carbon dioxide is 5.6. According to a 1987 report by the International Institute for Environmental and Development and the World Resources Institute (a copy of the relevant pages of the report is included in the RCRA public docket for today's notice), actual precipitation normally has a pH between 5.6 and 6.8. A detailed study by EPA's Atmospheric Research and Exposure Assessment Laboratory on acid precipitation in North America (see EPA Publication EPA/600/4–89/005, January 1989) showed that pH values for 1986 precipitation ranged from 3.91 to 6.73. Therefore, it is unlikely that the petitioned waste will be subject to alkaline leaching by precipitation.

The Agency also disagrees with the commenter's suggested use of the MEP to evaluate Philways' waste. The MEP consists of a series of repetitive extractions, starting with the EP as the first step, followed by the multiple extractions with pH 3 acid solution. While the MEP may be appropriated to evaluate the long-term stability of stabilized waste, such a procedure is not necessary for unstabilized waste such as Philway's. In any case, the MEP is still an acidic leaching procedure and would not, we believe, address the commenter's concern. Furthermore, the Agency does not believe that leaching the waste with distilled water, as suggested by the commenter, would be likely to leach higher concentrations of lead from Philway's waste. In this case, Philway's sludge has already been exposed to an alkaline wastewater with a pH in the range of 8.2 to 9.0, therefore any extraction with distilled water is unlikely to yield to any further solubilization of lead present in the waste.

EPA also believes that the two examples cited by the commenter are not germane to this case. First, the column leaching study of cement-treated incinerator ash is not analogous to any reasonably probable waste management scenario for Philway's petitioned waste. Such column leaching procedure was implemented to solubilize the constituents present in solidified ash, while the petitioned waste has never been stabilized and has already been exposed to the alkaline wastewater. The Agency, therefore, does not believe the results cited by the commenter are relevant to Philway's waste. Furthermore, the Agency notes that it is difficult to draw comparisons between the data obtained from the column leaching test and the data obtained from the EP toxicity tests due to significant differences in analytical procedures and assumptions regarding leachate generation. Specifically, the data obtained from the column leaching test was generated by continuously leaching 36.1 kg of crushed solidified incinerator residue having a particle size of less than one-half inch in a 60-inch (height) x 10-inch (diameter) column, using a pH 4.0 solution as a leaching medium. Whereas, the data obtained from the EP toxicity tests were generated by agitating the mixture of a pH 5.0 acetate buffer solution and 100 grams of ground sample having a particle size of less than 9.5 mm (0.375 inch), contained in an extractor, for a period of 24 hours. The commenter's view from the review of the column leaching study that "the alkalinity of the extraction fluid resulted

[1] Holland, P.J. et al., "Evaluation of Leachate Properties and Assessment of Heavy Metal Immobilization from Cement and Lime Amended Incinerator Residues," *Proceedings of the International Conference on Municipal Waste Combustion*, sponsored by U.S. EPA and Environment Canada, held April 11–14, 1989 in Hollywood, Florida, Vol. 1.

in solubilization of the lead present in the ash" is incorrect. In fact, that column leaching study adopted a pH 4.0 synthetic acid rain consisting of H_2SO_4 and HNO_3 acids as the leaching media; thus, the release (or solubilization) of lead at high pH levels did not appear to be attributed to the alkalinity of the extraction fluid as mentioned by the commenter. On the contrary, the acidic leaching media used in the column leaching study should have caused some degree of neutralization of the high pH in the alkaline waste matrix under study. Additionally, the column leaching test utilized a liquid to solid (L/S) ratio of 0.6 while the EP tests utilized a L/S ratio of 20. The Agency, therefore, is unable to compare the results obtained from two very different leaching procedures.

Lastly, arsenic is not a concern in this case. The maximum total arsenic concentration in the petitioned waste was found to be 0.05 ppm. Even if 100 percent of arsenic were to leach from the waste, the maximum arsenic concentration that could be present in the leachate would be only 0.0025 ppm (or 1/20th of the total concentration present in the waste, due to 20-fold dilution inherent in the EP toxicity test). This leachate concentration is well below the Agency's health-based level of 0.05 ppm for arsenic, and, therefore, the leaching of arsenic from Phiway's waste is not of concern.

Consideration of the Recently Proposed Drinking Waste Standard for Lead

The commenter also expressed concern that the Agency did not consider the recent proposal to lower the drinking water standard for lead to 0.005 ppm (see 53 FR 31516, August 18, 1988), especially since the compliance-point concentration for lead (0.0062 ppm) calculated using the VHS model exceeds this new standard.

In its delisting decision-making, the Agency relies on the existing health-based levels cited in "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions" (located in the RCRA public docket). EPA is unable to predict the final drinking water standard for lead until it is actually promulgated (*i.e.*, the standard could be less than or greater than the proposed level or the 0.005 ppm level cited by the commenter). Neither can the Agency be certain exactly when the new drinking water standard for lead might be promulgated. As a matter of equity, the Agency does not believe that the final decision on Philway's petition should be postponed until a new drinking water standard for lead is promulgated.

3. Final Agency Decision

For the reasons stated in the proposal and described above, the Agency believes that Philway's filter press sludge should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Philway Products, Incorporated, located in Ashland, Ohio, for its wastewater treatment filter press sludge described in its petition as EPA Hazardous Waste No. F006. The exclusion only applies to the processes and waste volume (a maximum of 96 cubic yards per year) covered by the original demonstration. The exclusion is only valid for lime-treated waste and does not cover any wastes produced by the substitution of caustic soda or other chemicals for lime as a neutralizing agent and precipitant. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered such that a change in waste composition or increase in waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under the State law.

IV. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, Whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis, which describes the impact of the rule on small entities *i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a

substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053

VIII. List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: September 20, 1990.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX. add the following wastestream in alphabetical order by facility:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1. WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	* *	* *
Philway Products, Incorporated.	Ashland, Ohio.	Filter press sludge generated (at a maximum annual rate of 96 cubic yards) during the treatment of electroplating wastewaters using lime (EPA Hazardous Waste No. F006). This exclusion was published on October 26, 1990.

* * * * *

[FR Doc. 90–25399 Filed 10–25–90; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Department Hearings and Appeals Procedures; Indian Probate Proceedings

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: This Office amends certain of its rules in 43 CFR part 4, subpart D, applicable in Indian Affairs Hearings and Appeals proceedings, by updating references and cross-references to section numbers and editions of the United States Code contained therin, as indicated below. This office also amends § 4.210 of these regulations by removing paragraph (d) thereof because it is generally repetitive of paragraph (c) of the regulation and, therefore, it is considered to be unnecessary. These amendments will improve the accuracy and clarity of the regulations concerned. The amendments do not later any substantive legal rights.

EFFECTIVE DATE: October 26, 1990.

FOR FURTHER INFORMATION CONTACT: Parlen L. McKenna, Chief Administrative Law Judge, Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Blvd., Arlington, VA 22203. Telephone: 703–235–3800 (not toll free).

SUPPLEMENTARY INFORMATION: Because these amendments are nonsubstantive in nature and because prompt action is in the public interest, the proposed rulemaking process is determined to be unnecessary and impracticable (5 U.S.C. 553(b)(B)).

Paperwork Reduction Act

This rulemaking does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *se seq.*

Compliance With Other Laws

The Department of the Interior has determined this document is not a major rule under Executive Order No. 12291 and certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rulemaking has no economic effect since it neither removes existing requirements nor imposes new ones. Also, this rulemaking is categorically excluded from the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 through 4347), process because it is of an adminstrative, financial, legal technical, and procedural nature, and therefore neigher an environmental assessment nor an environmental impact statement is required. 40 CFR 1508.4; 516 DM 2.3A.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Indians.

Dated: September 5, 1990.

Lou Gallegos,

Assistant Secretary—Policy, Management and Budget.

For the reasons set out in the preamble, title 43, part 4, subpart D, Code of Federal Regulations, is amended as set forth below.

PART 4—[AMENDED]

Subpart D—Rules Applicable in Indian Affairs Hearings and Appeals

1. The authority citation for part 4, subpart D, continues to read:

Authority: Secs. 1, 2, 36 Stat. 855, as amended, 856, as amended, sec. 1, 38 Stat. 586, 42 Stat. 1185, as amended, secs. 1, 2, 56 Stat. 1021, 1022; R.S. 463, 465; 5 U.S.C. 301, 25 U.S.C. secs. 2, 9, 372, 373, 374, 373a, 373b.

§ 4.200 [Amended]

2. Section 4.200 Scope of regulations is amended by removing from the second sentence thereof the reference "§§ 4.203 through 4.297" and by adding, in its place, the following: "§§ 4.203 through 4.282 and §§ 4.310 through 4.323." This sentence of the regulation is amended further by removing the reference therein to the 1970 edition of the United States Code, with the result that the citation will read only as follows: "25 U.S.C. 476."

§ 4.205 [Amended]

3. Section 4.205 Escheat is amended by removing references in paragraphs (a) and (b) thereof to the 1964 edition of the United States Code, with the result that the citations will read only as follows, respectively: "25 U.S.C. 373a" and "25 U.S.C. 373b."

§ 4.207 [Amended]

4. Paragraph (c) of § 4.207 Compromise settlement is amended by removing from the second sentence thereof the reference "25 CFR part 121" and by adding, in its place, the following: "25 CFR part 152."

§ 4.210 [Amended]

5. In § 4.210 Commencement of probate, paragraph (d) is removed.

§ 4.230 [Amended]

6. In paragraph (b) of § 4.230 Administrative law judges; authority and duties the reference to the 1964 edition of the United States Code is removed, with the result that the citation will read only as follows: "25 U.S.C. 374."

§ 4.270 [Amended]

7. Section 4.270 Custody and control of trust estates is amended by removing the reference "§ 4.296" and by adding, in its place, the following: "§ 4.312."

§ 4.272 [Amended]

8. Paragraph (a) of § 4.272 Omitted property is amended by removing the reference "§ 4.296" and by adding, in its place, the following: "§ 4.312."

§ 4.273 [Amended]

9. Paragraphs (a) and (d) of § 4.273 Improperly included property are amended by removing from paragraph (a) the reference "§ 4.296" and by adding, in its place, the following: "§ 4.312." The section is also amended by removing from paragraph (d), the reference "§§ 4.291—4.297," and by adding, in its place, the following: "§§ 4.310 through 4.323."

§ 4.274 [Amended]

10. Paragraph (a) of § 4.274 Distribution of estates is amended by removing the reference "§ 4.291(b)" and by adding, in its place, the following: "§ 4.320(b)."

§ 4.302 [Amended]

11. Paragraph (a) of § 4.320 Conclusion of probate and tribal exercise of statutory option is amended by removing the reference "§§ 4.200—4.296" and by adding, in its place, the following: "§§ 4.200 through 4.282 and §§ 4.310 through 4.323."

§ 4.305 [Amended]

12. Paragraph (c) of § 4.305 Hearing is amended by removing the reference "§§ 4.291—4.297" and by adding, in its place, the following: "§§ 4.310 through 4.323."

[FR Doc. 90-25380 Filed 10-25-90; 8:45 am]
BILLING CODE 4310-79-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

Announcement of Seminar on DOT-Required Drug Testing

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of seminar.

SUMMARY: The Department of Transportation is sponsoring a one-day seminar on Implementing Programs for a Drug-Free Transportation System. This notice concerns the date, locations, agenda, and registration information for this seminar.

DATES: The seminar will be broadcast by satellite on October 30, 1990, to 20 cities across the United States. The seminar will be broadcast to the following cities: Mobile, Ala.; Sacramento and San Diego, CA; Denver, CO; Tampa, FL; Indianapolis, IN; Kansas City, KS; Baltimore, MD; Boston, MA; St. Paul, MN; Billings, MO; Charlotte, NC; White Plains, NY; Oklahoma City, OK; Portland, OR; Pittsburgh, PA; Nashville, TN; Houston and El Paso, TX; and Salt Lake City, UT.

FOR FURTHER INFORMATION CONTACT: Mary Duke Sanders, Office of the Secretary, Department of Transportation, 400 7th Street, SW., Room 10200, Washington, DC 20590, (202-366-3784) (See supplementary information for phone number and address of contact for conference registration).

SUPPLEMENTARY INFORMATION: In November 1988, the Department of Transportation published regulations requiring drug testing programs in the aviation, maritime, railroad, mass transit, pipeline, and motor carrier industries. Employers in these industries must begin drug testing between December 1989 and December 1990. The Department is pleased that those who are responsible for transportation safety are responding positively to the challenge of implementing this significant and complex program.

This seminar is designed to assist all transportation companies and is particularly targeted to smaller operations, generally fewer than 50 employees, in implementing DOT's drug testing regulations scheduled to go into effect for these companies by December 21 of this year.

The seminar is designed to provide a forum for discussing the rules and how to implement them. Participants will be able to learn about drug rule implementation issues and will meet with DOT regional field representatives as well as have the opportunity to ask a panel of DOT officials via satellite to Washington questions during a Question and Answer period. Participants will also receive a copy of the new DOT drug testing procedures handbook.

The seminar will be one-day in length. Event format will include an overview of DOT drug testing regulations, an introduction to 49 CFR part 40 (the Department's Drug Testing Procedures rule, detailed discussion of such issues under part 40 as collection procedures, the chain of custody form, the testing process, quality control measures, and the role of the medical review officer; and the drug awareness and training requirements of the DOT rules. The afternoon portion of the seminar will feature presentations by the operating administration's drug program coordinators regarding requirements particularly to that industry.

Conference participation may be limited depending on industry response. The conference registration fee will be $25 per person. Attendees are responsible for their own hotel reservation if needed.

For registration materials and information, you should contact Art MacHugh, Transportation Safety Institute, at (405) 680-7196, (405) 680-3521 [fax].

Issued this 23d day of October, 1990, at Washington, DC.

Terrance W. Gainer,

Special Assistant to the Secretary and Director for Drug Enforcement and Program Compliance, U.S. Department of Transportation.

[FR Doc. 90-25488 Filed 10-24-90; 11:13 am]
BILLING CODE 4910-62-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018-AA71

Refuge-Specific Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) here amends certain regulations in 50 CFR part 32 that pertain to migratory game bird, upland game, and big game hunting on individual national wildlife refuges. Refuge hunting programs are reviewed annually to determine whether the regulations governing individual refuge hunts should be modified, deleted or added to. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitats may warrant modifications to ensure the continued compatibility of hunting with the purposes for which the individual refuges involved were established and, to the extent practical, make refuge

hunting programs consistent with State regulations.

EFFECTIVE DATES: October 26, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Karges, U.S. Fish and Wildlife Service, Division of Refuges, 1849 C. Street, NW., MS 670–ARLSQ, Washington, DC 20240; telephone (703) 358–2043.

SUPPLEMENTARY INFORMATION: 50 CFR part 32 contains provisions governing hunting on national wildlife refuges. Hunting is regulated on refuges to (1) ensure compatibility with refuge purposes, (2) properly manage the wildlife resource, (3) protect other refuge values, and (4) ensure the safety of refuge users and neighbors. On many refuges, the Service policy of adopting state hunting regulations is adequate in meeting these objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to ensure that the Service meets its management responsibilities, as outlined under the section entitled "Conformance with Statutory and Regulatory Authorities." Refuge-specific hunting regulations may be issued only after a wildlife refuge is opened to migratory game bird, upland game, or big game hunting through publication in the **Federal Register**. These regulations may list the wildlife species that may be hunted, seasons, bag limits, methods of hunting, descriptions of open areas, and other provisions. Previously issued refuge-specific regulations for migratory game bird, upland game, and big game hunting are contained in 50 CFR 32.12, 32.22, and 32.32 respectively. Some of the proposed amendments to these sections are being promulgated to standardize and clarify the existing language of these regulations.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process.

In the July 24, 1990, issue of the **Federal Register** 55 FR 30014 the Service published a proposed rulemaking to amend certain regulations in 50 CFR part 32 and invited public comment. The Service's responses to those comments are contained in the following section.

Responses to Comments Received

Written comments on the proposed rule were received from six parties. One party, the Wildlife Legislative Fund of America supported biologically sound hunting regulations in general. The remaining five parties opposed establishing a motorless/electric motor hunting area at the Lower Klamath National Wildlife Refuge in California.

Issue 1: Motorless areas are unnecessary.

Response: A portion of the hunting public requested a motorless area. It is an objective of the refuge to provide diverse hunting opportunities to all the hunting public.

Issue. 2: The area selected and the size of the area were not agreed to by the public.

Response: At a February 1990 meeting in Klamath Falls, Oregon, those in attendance opposed designation of Unit 9 on Lower Klamath as a motorless area. Some suggested Unit 4–C as an alternative. Refuge staff reviewed this recommendation and concurred. In addition, Units 4–D, E, and F were included since they are essentially walk-in hunting areas with little or no opportunity for outboard boat access except in some of the field edge ditches when there is sufficient water. The total area will provide a variety of hunting opportunities, i.e., open water, permanent marsh, and seasonally flooded wetlands for hunters in an area where outboard motors are precluded.

Issue 3: When ice forms, access to motorless areas will be difficult since larger outboards can break ice and provide access.

Response: Ice formation at Lower Klamath is a highly variable matter each year. Freeze-up is early some years and very late others. In addition, there can be periods of thaw interspersed throughout the season. The small amount of access that may be precluded by thick ice that otherwise could have been broken by outboard boats will not be significant. The amount of open water previously maintained by boats in these units is not necessary for the general welfare of the waterfowl populations utilizing the refuge.

Issue 4: Refuge management does not consult with guides and other hunters regularly on hunting issues.

Response: Public meetings have been held each of the past 2 years to gather input from all hunters. Future actions will provide opportunity for public input at a public meeting. In addition, new releases and a refuge newsletter will be used to disseminate information to hunters and other refuge users regarding public use activities on all refuge units in the Klamath Basin Complex.

During the 1990–91 hunting season the motorless area will be closely monitored to evaluate hunter use and acceptance, impacts, if any, to waterfowl populations, and its relationship to the total hunting opportunity at Lower Klamath Refuge. Comments by hunters are encouraged throughout or immediately following the season.

Conformance With Statutory and Regulatory Authorities

The National Wildlife Refuge System Administration Act (NWSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act of 1962 (16 U.S.C. 460K) govern the administration and public use of national wildlife refuges. Specifically, section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior to permit the use of any area within the Refuge System for any purpose, including but not limited to, hunting, fishing, public recreation, accommodations, and access, when he determines that such uses are compatible with the major purpose(s) for which area was established.

The Refuge Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The Refuge Recreation Act also authorizes the Secretary to issue regulations to carry out the purposes of the Act. Hunting plans are developed for each refuge prior to opening it to hunting. In many cases, refuge-specific hunting regulations are inlcuded in the hunting plan to ensure the compatibility of the hunting programs with the purposes for which the refuge Recreation Act is ensured when hunting plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the list of areas open to hunting in 50 CFR. Continued compliance is ensured by annual review of hunting programs and regulations.

In view of the rapidly approaching hunting seasons, there is an immediate need to place these regulations into effect. It is Service policy to conduct hunting within the framework of State laws, regulations and seasons. To delay opening the refuges to hunting may cause confusion to the public, deny a benefit to the public and small related businesses and would not be in the best interest of the Service or the public. Thus the Department of the Interior concludes that good cause exists within the meaning of 5 U.S.C 553(d)(3) of the Administrative Procedure Act to make these regulations effective upon publication in the **Federal Register**.

Economic Effect

Executive Order 12291 requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect

on the economy of $100 million or more; or a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

These amendments to the codified refuge-specific hunting regulations make relatively minor adjustments to existing hunting programs. The regulations are not expected to have any gross economic effect and will not cause an increase in costs or prices for consumers, individual industries, Federal, state, or local governments, agencies, or geographic regions. The benefits accruing to the public are expected to exceed by a large margin the costs of administering this rule. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of E.O. 12291 and will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The Service has approval from the Office of Management and Budget (OMB) for the information collection requirements of these regulations pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements are presently approved by OMB as cited below:

Type of information collection	OMB approval no.
Economic and public use permits	1018–0014

Public reporting burden for this form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018–0014), Washington, DC 20503.

Environmental Considerations

Compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) is ensured when hunting plans are developed, and the determinations required by these acts are made prior to the addition of refuges to the lists of areas open to hunting in 50 CFR part 32. Refuge-specific hunting regulations are subject to a categorical exclusion from the NEPA process if they do not significantly alter the existing use of a particular national wildlife refuge. The changes enacted in this rulemaking do not substantially alter the existing uses of the refuges involved. Information regarding hunting permits and the conditions that apply to individual refuge hunts and maps of the hunt areas are available at refuge headquarters or can be obtained from the regional offices of the U.S. Fish and Wildlife Service at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, Oregon 97232–4181; telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma and Texas. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103; telephone (505) 766–1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; telephone (612) 725–3507.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303; telephone (404) 331–0833.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, One Gateway Center, suite 700, Newton Corner, Massachusetts 02158; telephone (617) 965–9222.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; telephone (303) 236–8145.

Region 7—Alaska (Hunting on Alaska refuges is in accordance with State regulations. There are no refuge-specific hunting regulations for these refuges). Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; telephone (907) 786–3538.

List of Subjects in 50 CFR Part 32

Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, part 32 of chapter I of title 50 of the *Code of Federal Regulations* is amended as set forth below:

1. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. Section 32.12 is amended by revising paragraphs (d)(1) and (d)(3); adding paragraph (f)(7)(vii); revising paragraphs (k)(2), (m), (g), (u)(2), (u)(3), (u)(4), (u)(5) and (u)(6); redesignating paragraphs (y)(1) as (y)(2) adding new paragraph (y)(1); removing paragraphs (cc)(2) (v) (vi) revising paragraphs (dd)(3), (hh)(11)(v); adding paragraphs (hh)(4)(v) and (hh)(11)(vii); revising paragraphs (mm)(1)(ii), (mm)(5)(vi), (mm)(7) (i) and (v); adding paragraphs (mm)(1)(vii), (mm)(5)(vii) and (mm)(7)(vi); revising paragraph (pp) and (qq) (4) (ii) and (v); adding new paragraph (qq)(4) (vii), revising paragraphs (qq)(5)(iv), (qq)(6) and (qq)(7) (iii) and (iv) as follows:

§ 32.12 Refuge-specific regulations; migratory game birds.

* * * * *

(d) *Arizona and California—(1) Cibola National Wildlife Refuge.* Hunting of geese, ducks, coots, mooshens, mourning and white-winged doves is permitted on designated areas of the refuge subject to the following conditions:

(i) Non-toxic shot, is required for all migratory game bird hunting. It is prohibited to posses migratory game birds with lead shot in possession.

(ii) Legal weapon shall be shotgun only.

(iii) Special Use Permits are required for all hunting guides.

(iv) Hunting is not permitted within 50 yards of any road or levee or within 250 yards of any farm worker.

(v) Pit or permanent blinds are not permitted.

(vi) Migratory game bird hunting will cease at 3:00 p.m. each day.

(vii) The following additional restrictions apply to Zone IIA:

(A) During the Arizona waterfowl season, Farm Unit 2 is closed to dove hunting until noon each day.

(B) In Farm Unit 2, waterfowl hunters must remain within 50 feet or designated stations while hunting except when actively retrieving downed birds.

(C) During the goose season, the Hart Mine Marsh Area is cloased to hunting until 10 a.m. daily.

(D) Hunters are restricted to 10 shells per day, except in the Hart Mine Marsh area.

* * * * *

(3) *Imperial National Wildlife Refuge.* Hunting of mourning and white-winged doves, ducks, coots, moorhens, geese and common snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Pits and permanent blinds are not permitted.

* * * * *

(f) *California*—* * *

(7) *Lower Klamath National Wildlife Refuge.* * * *

(vii) Only nonmotorized boats and boats with electric motors are permitted in Units 4 c, d, e, and f.

* * * * *

(k) *Illinois*—* * *

(2) *Crab Orchard National Wildlife Refuge.* (i) Waterfowl hunting is permitted on the controlled areas of Grassy Point, Carterville and Greebrair land areas, plus Orchard, Turkey, and Sawmill and Grassy Islands, from sunrise to posted closing times each day during the goose season. Waterfowl hunting in these areas, including lake shorelines, is permitted only from existing refuge blinds during the goose season. Hunters must comply with the special rules posted at the blind drawing site.

(ii) All hunters are prohibited from possessing alcoholic beverages in the hunting areas.

(iii) Outside of the controlled goose hunting areas, only portable or temporary blinds may be used. Blinds may not be located beyond the shoreline of refuge waters, must be removed or dismantled at the end of each day's hunt, and must be located a minimum of 100 yards apart.

* * * * *

(m) *Illinois, Iowa and Missouri—Mark Twain National Wildlife Refuge.* (1) On the Big Timber Division, including Turkey and Otter Islands, only temporary wood or brush blinds are permitted. Blinds cannot be locked or otherwise sealed against public entry. Blinds are open to the public on a first-come, first-served basis if not occupied 30 minutes after the start of the legal shooting hours.

(2) On the Gardner Division, waterfowl and coot hunting is permitted only from blinds constructed on sites posted by the Illinois Department of Conservation.

* * * * *

(q) *Maine—Rachel Carson National Wildlife Refuge.* Hunting of ducks, geese, coots, woodcock and snipe is permitted on designated areas on the refuge subject to the following condition: Boats, decoys and portable blinds, must be moved from the refuge after each day's hunt.

* * * * *

(u) *Mississippi*—* * *

(2) *Hillside National Wildlife Refuge.* Hunting of mourning doves, ducks, coots, snipe and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(3) *Mathews Brake National Wildlife Refuge.* Hunting of ducks, coots, snipe, and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(4) *Morgan Brake National Wildlife Refuge.* Hunting of ducks, coots, snipe, and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(5) *Noxubee National Wildlife Refuge.* Hunting of ducks, and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(6) *Panther Swamp National Wildlife Refuge.* Hunting of ducks coots, snipe, and woodcock is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(y) *Nevada*—(1) *Ash Meadows National Wildlife Refuge.* Hunting of geese, ducks, coots, moorhens, snipe, and dove is permitted on designated areas of the refuge.

* * * * *

(dd) *North Carolina*—* * *

(3) *Mattamuskeet National Wildlife Refuge.* Hunting of swans, ducks and coots is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(hh) *Oregon*—* * *

(4) *Cold Springs National Wildlife Refuge*—* * *

(v) The refuge is closed from 10 p.m. to 5 a.m.

* * * * *

(11) *Umatilla National Wildlife Refuge.* * * *

(v) Hunters may not possess or use more than 20 shells per day. * * *

(vii) The refuge is closed from 10 p.m. to 5 a.m. except for the Hunter Check Station parking lot, which is open each morning two hours prior to State shooting hours for waterfowl.

* * * * *

(mm) *Texas (1) Anahuac National Wildlife Refuge.* * * *

(ii) The refuge unit located north of Onion Bayou and Jackson Ditch, known as the East Unit, is open to hunting only on designated days of the week. Notice of actual hunting days is issued as provided in 50 CFR 25.31.

(vii) Only shotguns are permitted.

* * * * *

(5) *McFaddin National Wildlife Refuge.* * * *

(vi) Use of airboats is permitted only in accordance with guidelines issues as provided in 50 CFR 25.31.

(vii) Only shotguns are permitted.

* * * * *

(7) *Texas Point National Wildlife Refuge.* * * *

(i) Hunting is permitted only on designated days of the week. Notice of actual hunting days is issued as provided in 50 CFR 25.31.

* * * * *

(v) Use of airboats is permitted only in accordance with specific guidelines issued as provided in 50 CFR 25.31.

(vi) Only shotguns are permitted.

* * * * *

(pp) *Virginia—Chincoteague National Wildlife Refuge.* Hunting of waterfowl is permitted on designated areas of the refuge subject to the following conditions:

(1) Permits are required on the non-guided public hunting areas on Wildcat Marsh and Morris Island.

(2) On Wildcat Marsh, compartments 1–4 are reserved for guided hunting only, with refuge-designated commercial guides.

(3) Permanent blinds are not permitted in public hunting areas.

(4) Permanent blinds are permitted in compartments 1–4 on Wildcat Marsh during the season but must be removed within ten (10) days following the end of the season.

(5) Blind sites are limited to one party of hunters, with a maximum of 4 hunters per party.

(6) Hunters shall possess and use while in the field only non-toxic shot.

(7) Public hunting is permitted only on Thursday, Friday, and Saturday during the Virginia waterfowl season.

* * * * *

(qq) *Washington*—* * *

(4) *McNary National Wildlife Refuge.* * * *

(ii) In the McNary Division hunting area, public entry is permitted only on Wednesdays, Saturdays, Sundays, Veterans Day, Thanksgiving Day, Christmas Day and New Years Day.

* * * * *

(v) Hunters may not enter or be on the refuge between one hour after sunset and 5 a.m. or leave decoys or other

personal property on the refuge overnight. * * *

(vii) Hunters may not possess or use more than 20 shells per day.

(5) *Ridgefield National Wildlife Refuge.* * * *

(iv) Hunters may not use or possess more than 20 shells per day.

(6) *Toppenish National Wildlife Refuge.* Hunting of geese, ducks, coots and snipe is permitted on designated areas of the refuge subject to the following conditions:

(i) Hunting is permitted only within 50 feet of designated blind sites except when shooting to retrieve crippled birds.

(ii) Hunters may not use or possess more than 20 shells per day.

(7) *Umatilla National Wildlife Refuge.* * * *

(iii) The refuge is closed from 10:00 p.m. to 5:00 a.m. No decoys or other personal property may be left on the refuge overnight.

(iv) Hunters may not use or possess more than 20 shells per day.

* * * * *

3. Section 32.22 is amended by revising paragraphs (c)(1), (h)(4), (k), and (l)(2); adding paragraphs (q)(4)(iv) and (q)(8) (iv); revising paragraphs (r), (v)(2), (v)(3), (v)(4), (v)(6) and (v)(7); respectively; adding new paragraph (z)(1); revising paragraph (bb)(2); revising paragraph (oo)(2) as follows:

§32.22 Refuge-specific regulations; upland game.

* * * * *

(c) *Arizona and California—(1) Cibola National Wildlife Refuge.* Hunting of quail and cottontail rabbit is permitted on designated areas of the refuge subject to the following conditions:

(i) The legal weapon shall be shotguns and bows and arrows.

(ii) Non-toxic shot is required for Farm Unit 2 and the Island Unit.

(iii) During the Arizona waterfowl season, hunting of quail and rabbit is not permitted in Farm Unit 2 until noon.

(iv) Hunting of cottontail rabbit is permitted from September 1, through the last day of the respective State's quail season.

(v) Hunting is permitted from one half-hour before sunrise to 3:00 p.m. daily.

(vi) Hunting is not permitted within 50 yards of any road or levee or 250 yards of any farm worker.

* * * * *

(h) *Florida—* * * *

(4) St. Vincent National Wildlife Refuge. Hunting of raccoon is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(k) *Illinois—Crab Orchard National Wildlife Refuge.* Hunting of upland game is permitted on designated areas of the refuge subject to the following conditions:

(1) Upland game hunting is not permitted in the controlled goose hunting areas during the permitted waterfowl hunting hours.

(2) No rifles may be used with ammunition larger than .22 caliber rim fire, except black powder weapons up to and including .40 caliber may be used.

(l) *Illinois, Iowa, and Missouri—Mark Twain National Wildlife Refuge.* * * *

(2) Hunting of squirrel is permitted on the Keithsburg Division from September 1 through September 15.

* * * * *

(q) *Louisiana—* * * *

(4) *D'Arbonne National Wildlife Refuge—* * * *

(iv) Lead shot is permitted only on designated portions of the refuge.

* * * * *

(8) *Upper Ouachita National Wildlife Refuge.* * * *

(iv) Lead shot is permitted only on designated portions of the refuge.

* * * * *

(r) *Maine—Rachel Carson National Wildlife Refuge.* Hunting of upland game birds, grey squirrel, cottontail rabbit, snowshoe hare, fox, and coyote is permitted on designated areas of the refuge subject to the following conditions: Fox and coyote may be hunted only during the State deer season.

* * * * *

(v) *Mississippi—* * * *

(2) *Hillside National Wildlife Refuge.* Hunting of quail, rabbit, squirrel, beaver, raccoon, and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(3) *Mathews Brake National Wildlife Refuge.* Hunting of quail, rabbit, squirrel, beaver, raccoon, and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(4) *Morgan Brake National Wildlife Refuge.* Hunting of quail, rabbit, squirrel, beaver, raccoon, and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(6) *Panther Swamp National Wildlife Refuge.* Hunting of quail, rabbit, squirrel, beaver, raccoon, and opossum is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(7) *Yazoo National Wildlife Refuge.* Hunting of squirrel, rabbit, raccoon, opossum, and furbearers is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(z) *Nevada—(1) Ash Meadows National Wildlife Refuge.* Hunting of quail, and rabbit is permitted on designated areas of the refuge subject to the following condition: Hunting of jackrabbit is permitted only during the regular State season for cottontail rabbit.

* * * * *

(bb) *New York—* * *

(2) *Montezuma National Wildlife Refuge.*

(i) All hunters must possess and return at day's end, a valid daily hunt permit card.

(ii) A Special Use Permit is required for night hunting of furbearers.

(iii) Hunting is permitted from the close of the refuge deer season through the close of the respective State season.

(iv) Shotguns only are permitted, except that .22 caliber rim fire firearms may be used to take furbearers at night.

* * * * *

(oo) *Wisconsin—* * * *

(2) *Necedah National Wildlife Refuge.* Hunting of wild turkey, ruffed grouse, gray squirrel, fox squirrel, cottontail rabbit, snowshoe hare, and raccoon only is permitted on designated areas of the refuge subject to the following conditions:

(i) During the State waterfowl hunting season, guns must be unloaded or cased in the retrieval zone of Refuge Area 5.

(ii) During the spring turkey hunting season only, persons having an unexpired State Spring Turkey Permit in possession may enter and hunt wild turkeys in Refuge Area 3.

(iii) Refuge Area 3 is open to hunting after the State deer gun season through the end of the respective State seasons or until February 28, whichever occurs first.

* * * * *

4. Section 32.32 is amended by revising paragraphs (h)(5), (i)(5), (l) (2) and (3), (n) (1) and (2), (r)(4) (i) and (ii), (r)(9) (i) and (ii), (t)(2), (y)(2), (y)(3), (y)(4), (y)(5), (y)(6), and (y)(7); adding (ff)(2) (i), (ii) and (iii); removing (gg)(2)(vi); designating (gg)(2)(vii) as (gg)(2)(vi); revising (gg)(5), (nn)(1), (nn)(3), (nn)(4) and (rr)(2); revising (rr)(3) (ii) through (vi); removing (rr)(3)(vii); revising (tt)(3)(i) and adding (tt)(3) (iv) through (vi) as follows:

§ 32.32 Refuge-specific regulations; big game.

* * * * *

(h) *Florida—* * * *

(5) *St. Vincent National Wildlife Refuge.* Hunting of white-tailed and sambar deer, turkey, and feral hogs is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(i) *Georgia*— * * *

(5) *Piedmont National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(l) *Illinois—Crab Orchard National Wildlife Refuge.* * * *

(2) Hunters using the Closed Area are required to check in at the refuge visitor contact station prior to hunting and must comply with the special rules provided to them.

(3) Deer hunting is not permitted in the controlled goose hunting areas during the permitted waterfowl hunting hours.

* * * * *

(n) *Illinois, Iowa, and Missouri—Mark Twain National Wildlife Refuge.* * * *

(1) Hunting is permitted on the Gardner and Big Timber Division, including Turkey and Otter Island.

(2) Hunting of antlerless deer only is permitted on the Delair Division during a portion of the State season and/or during specially designated dates subject to the following conditions: Permits are required, hunters must be 16 years of age or older, and hunting hours will be 7 a.m. until 3 p.m.

* * * * *

(r) *Louisiana*— * * *

(4) *D'Arbonne National Wildlife Refuge*— * * *

(i) Either-sex deer hunting with firearms is permitted for two consecutive days beginning with the first day of the Union Parish either-sex season and the following Friday and Saturday.

(ii) Two consecutive days of either-sex deer hunting with muzzleloaders and archery will be permitted beginning the first Saturday in December.

* * * * *

(9) *Upper Ouachita National Wildlife Refuge.*— * * *

(i) Either-sex deer hunting with firearms is permitted for two consecutive days beginning with the first day of the Union Parish either-sex season and the following Friday and Saturday.

(ii) Two consecutive days of either-sex deer hunting with muzzleloaders and archery will be permitted beginning the first Saturday in December.

* * * * *

(t) *Maine*— * * *

(2) *Rachel Carson National Wildlife Refuge.* Hunting of deer is permitted on designated areas of the refuge.

* * * * *

(y) *Mississippi*— * * *

(2) *Hillside National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(3) *Mathews Brake National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(4) *Morgan Brake National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(5) *Noxubee National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(6) *Panther Swamp National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(7) *Yazoo National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(ff) *New York*— * * *

(2) *Montezuma National Wildlife Refuge.*

(i) All hunters must possess and return at day's end, a valid daily hunt permit card.

(ii) Hunting of deer is permitted on designated portions of the refuge by archery, shotgun, or muzzleloader only during established refuge seasons set within the general State deer season.

(iii) Hunters during the refuge firearms season, must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches of solid-colored blaze orange clothing or material.

* * * * *

(gg) *North Carolina*— * * *

(2) *Great Dismal Swamp National Wildlife.* * * *

(vi) Hunting and/or possession of loaded firearms on refuge roads and road rights-of-way is prohibited.

* * * * *

(5) *Pungo National Wildlife Refuge.* Hunting of white-tailed deer is permitted on designated areas of the refuge subject to the following condition: Permits are required:

* * * * *

(nn) *Tennessee—(1) Chickasaw National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(3) *Hatchie National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

(4) *Lower Hatchie National Wildlife Refuge.* Hunting of white-tailed deer and turkey is permitted on designated areas of the refuge subject to the following condition: Permits are required.

* * * * *

(rr) *Virginia*—* * *

(2) *Chincoteague National Wildlife Refuge.* Hunting of sika deer is permitted on designated areas of the refuge subject to the following conditions:

(i) Permits are required.

(ii) Dogs are not permitted.

(iii) During the State firearms season, hunters must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

(3) Great Dismal Swamp National Wildlife Refuge. * * *

(ii) Only shotguns, 20 gauge or larger, loaded with buckshot and/or rifled slugs, and bows and arrows, are permitted

(iii) Dogs are not permitted.

(iv) Hunters must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches of solid-colored hunter orange clothing or material.

(v) Hunting and/or possession of loaded firearms on refuge roads including road rights-of-way is prohibited.

(vi) Hunters are required to sign in and sign out.

* * * * *

(tt) *Wisconsin*—* * *

(3) *Necedah National Wildlife Refuge.*

* * *

(i) Hunting with a loaded rifle or shotgun within 50 feet of the centerline of all refuge roads or trails, as shown on the refuge hunting leaflet or discharging these weapons from, across, down, or alongside these roads and trails is prohibited.

* * * * *

(iv) Refuge Areas 1, 2, 4, 5, and 6 are open to deer hunting during the State gun and both early and late archery seasons.

(v) Refuge Area 3 is open to deer hunting during the State gun and late archery season.

(vi) Target or practice shooting is not permitted.

* * * * *

Dated: October 4, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-25256 Filed 10-25-90; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 55, No. 208
Friday October 26, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 122

Business Loans, Interest Rates

AGENCY: Small Business Administration (SBA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The SBA is proposing to amend the regulations so that lenders which make guaranteed loans of $50,000 or less would be permitted to receive a higher interest rate. It is contemplated that if this proposal is promulgated in final it would encourage lenders to make smaller loans to more business concerns.

DATES: Comments must be submitted on or before November 26, 1990.

ADDRESSES: Comments may be mailed to Charles R. Hertzberg, Assistant Administrator for Financial Assistance, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, 202/653–6574.

SUPPLEMENTARY INFORMATION: Under present provisions of the Small Business Act (15 U.S.C. 636(a)(19)(B)), an SBA participating lender which makes a loan of $50,000 or less is permitted to retain one half of the guaranty fee (the guaranty fee is equivalent to two percent of such guaranteed portion). This, if the guaranteed portion is $40,000, the guaranty fee is $800, and the lender is permitted to keep $400 and remit to the SBA the remaining $400. If the guaranteed amount of the loan is $25,000, the lender is allowed to retain $250, and it would remit $250 to the SBA. Under the legislation, such guaranty fee sharing for smaller loans terminates September 30, 1991.

The cost of processing and servicing loans is relatively constant. There is little processing or servicing cost differential to a lender between a $50,000 loan and a $500,000 loan. There does exist, however, a notable benefit differential to the lender. The lender's interest earnings are greater on a large loan. Congress recognized this fact when it enacted Public Law 100–533 on October 25, 1988 (102 Stat. 2693) which initially authorized the guaranty fee sharing for smaller loans.

In 1989, the year in which such guaranty fee sharing was introduced, 14.7 percent of the SBA guaranteed loans was under $50,000. In the first two quarters of fiscal 1990, 15.3 percent of such loans was less than $50,000. In the third quarter of fiscal 1990, the percentage of guaranteed loans less than $50,000 was 16.8 percent. The incentives appear to be having a positive impact, although not so great as SBA desires. SBA wants lenders to make smaller loans available to more small businesses and it believes that this can be accomplished if the interest rate structure was adjusted in order to give lenders a greater incentive to offer such loans.

SBA has statistical information indicating that many of the loans presently made in amounts up to $50,000 are made at interest rates below the SBA maximum permissible rate. This would indicate the existence of competition among these lenders for loans in such amounts. For this reason, SBA believes it is unlikely that this proposal, if adopted in final form, would increase interest costs to qualifying borrowers at currently participating institutions. The proposal is intended to provide an inducement to those lenders which do not presently make such loans by offsetting all or part of the proportionately higher costs of making smaller loans.

The law requires that the interest rate charged by an SBA participating lender be legal and reasonable. Within these parameters, the Agency has promulgated maximum interest rates which lenders must comply with in making guaranteed loans. Thus, for a variable rate loan with a maturity under seven years, the initial maximum interest rate cannot exceed 2¼ percentage points over a base rate. For a variable rate loan with a maturity of seven years or more, the initial maximum interest rate cannot exceed 2¾ percentage points over a base rate. Allowing lenders to remain one half of the guaranty fee with respect to smaller loans may not be a sufficient incentive for them to make these loans in the numbers that SBA believes to be desirable as a matter of public policy. SBA wants the interest rate maximums as set forth in the regulations and summarized above to be changed to encourage lenders to make more loans of $50,000 and less. However, SBA intends to monitor all loans made in amount, up to $50,000 to determine whether such loans continue to be made at competitive rates and to assure that the maximum permissible rate does not become an automatic floor.

Accordingly, SBA is proposing to amend the regulations so that for variable rate loans between $25,000 and $50,000 the lender would be permitted to add one percentage point to the above-stated maximums. For variable rate loans less than $25,000, a lender would be allowed to add two percentage points to the above maximums. For guaranteed loans carrying a fixed rate of interest, SBA, pursuant to § 122.8–3 of the regulations (13 CFR 122.8–3), will publish from time to time in the **Federal Register** the maximum rate permitted for smaller loans, adding the same percentage points described above. The use of these higher maximums for smaller loans would not be mandated or required. The marketplace would still determine if a borrower in need of minimal financing would be prepared to pay additional interest. The Agency is proposing these changes to encourage lenders by giving them this option of a greater return for making a smaller loan.

As noted above, the guaranty fee sharing provisions for the smaller loans terminates, by law, on September 30, 1991. SBA plans to analyze the effect of all the incentives prior to program termination and to report to the Congress on the results. Because the program terminates, under present law, in less than a year, SBA is seeking public comment for 30 days in order to give the Agency time to evaluate responses and promulgate a final rule which would be effective for a reasonable period of time before termination.

Section 122.8–4 would be repealed since it relates to a pilot project established in 1984 for one year. Fluctuations of the interest rates for loans made purusant to this pilot are

governed by other provisions in the regulations.

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this proposed rule, if promulgated in final form, will not have a significant impact on a substantial number of small entities. SBA certifies that this proposed rule does not constitute a major rule for the purposes of Executive Order 12291, since the proposed change is not likely to result in an annual effect on the economy of $100 million or more.

The proposed rule, if promulgated in final form, would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35.

This proposed rule would not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 122

Loan programs/business, Small businessess.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend part 122, chapter I, title 13, Code of Federal Regulations, as follows:

PART 122—Business Loans

1. The authority citation for part 122 would continue to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a).

2. Section 122.8–4 would be amended by removing paragraph (h); redesignating paragraph (g) as paragraph (h); and adding a new paragraph (g) to read as follows:

§ 122.8–4 Variable (fluctuating) rate.

* * * * *

(g) *Special rules for small loans approved through September 30, 1991.* For a variable rate loan over $25,000 through $50,000, the maximum interest rate described above may be increased by one percentage point. For a variable rate loan of $25,000 or less, the maximum interest rate described above may be increased by two percentage points.

(Catalogue of Federal Domestic Assistance Programs, No. 59.012, Small Business Loans)

Dated: September 17, 1990.

Susan Engeleiter,

Administrator

[FR Doc. 90–25334 Filed 10–25–90; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90–CE–33–AD]

Airworthiness Directives; Pilatus Britten-Norman (PBN) Limited Model BN–2T Turbine Islander Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new Airworthiness Directive (AD), applicable to Pilatus Britten-Norman (PBN) Limited Model BN–2T Turbine Islander airplanes, that would modify the engine ignition system to provide continuous ignition when engine inlet heat is selected. Incidents have been reported of single and dual engine flameouts resulting from undetected ice ingestion. This modification would prevent engine flameout due to ice ingestion.

DATES: Comments must be received on or before December 14, 1990.

ADDRESSES: PBN Service Bulletin (SB) BN–2/SB 193, dated April 11, 1990, applicable to this AD, may be obtained form Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, PO36 5PR, England; telephone (44–983) 872511. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–33–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m. Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Carl F. Mittag, Aircraft Certification Staff, Europe, Africa, and Middle East Office, FAA c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.38.30 ext. 2710; Facsimile (322) 230.68.99; or Mr. John P. Dow, Sr., Small Airplane Directorate Airplane Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6932; Facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report, summarizing each FAA-public contact concerned with the substance of this proposal, will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–33–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Incidents of ice-induced engine flameout have been reported on PBN Limited Model BN–2T airplanes because of ice ingestion after the selection of engine inlet heat. Ice formation may occur in the engine inlet and in the compressor when visible moisture exists and the air temperature is less than 5 degrees centigrade. This ice will then be ingested into the engine when the engine inlet heat is turned on as required in the airplane flight manual (AFM) and may result in flameout of the engine and total loss of power. Since loss of power can occur almost simultaneously to both engines, the resulting condition could be serious if the airplane were operating at an altitude that would preclude restarting the engines before contacting the ground.

In addition to the manufacturer's reports, the Civil Aviation Authority of the United Kingdom (CAA–UK), which is the airworthiness authority of the UK, notified the FAA that an unsafe condition may exist on these PBN Limited Model BN–2T airplanes. The CAA–UK advises that ice formation could occur in the engine inlet and in the compressor of these airplanes when visiable moisture exists and the air temperature is less than 5 degrees. This could result in engine flameout and total loss of power. Pilatus Britten-Norman (PBN) Limited issued PBN SB BN–2/SB

193, dated April 11, 1990, which when followed would provide a modification that prevents flameouts from occurring by automatically selecting continuous ignition when engine inlet heat is utilized. The CAA–UK classified this SB as mandatory and issued AD 021–04–90 to require the modification. These airplanes are manufactured in the United Kingdom and are type certificated for operation in the United States.

Under the provisions of a bilateral airworthiness agreement, the FAA relies upon the findings of the CAA–UK, combined with FAA review of pertinent information, in determining that AD action is necessary for products of this type design, certificated for operation in the United States.

Consequently, the FAA is proposing an AD that would require the modification of the engine ignition system on PBN Model BN–2T Turbine Islander airplanes in accordance with PBN SB BN–2/SB 193.

While there are no PBN Model BN–2T Turbine Islander airplanes currently listed on the U.S. registry, they may be imported at any time since they are type certificated in the United States. The cost of modifying the engine ignition system per the proposed AD is estimated to be $240 for labor and approximately $5,695 for parts for a total of $5,935 per airplane. At this time, there would be no cost to U.S. operators. It would be necessary for small business entities to import more than 8 of the affected airplanes to incur a cost of compliance to equal or exceed the significant threshold cost level for small business entities.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small business entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket, at the location provided under the caption "**ADDRESSESS**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Pilatus Britten-Norman (PBN) Limited: Docket No. 90–CE–33–AD. Applicability: Model BN–2T (all serial numbers) Turbine Islander airplanes, certificated in any category, that do not have PBN Modification Number NB/M/1429 incorporated.

Compliance: Required within the next 200 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent the loss of engine power on both engines simultaneously, accomplish the following:

(a) Modify the airplane engine ignition system as described in PBN Service Bulletin BN–2/SB 193, dated April 11, 1990.

(b) Airplanes may be flown in accordance with FAR 21.197 of the FAR to a location where this AD may be accomplished.

(c) An alternate method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Staff. All persons affected by this directive may obtain copies of the document referred to herein upon request to Pilatus Britten-Norman Limited, Bembridge Airport, Isle of Wight, PO36 5PR, England; telephone (44–983) 872511; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 12, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–25347 Filed 10–25–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 90–CE–32–AD]

Airworthiness Directives; Pilatus Britten-Norman (PBN) Limited Model BN–2T Turbine Islander Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness Directive (AD), applicable to certain Pilatus Britten-Norman (PBN) Limited Model BN–2T Turbine Islander airplanes, that would require modification of the starter/generator electrical circuit. Service experience has shown that it is possible to have an undetected circuit breaker trip in the starter/generator circuit after an engine shutdown that would prevent a restart. This modification would ensure the ability to restart engines in flight.

DATES: Comments must be received on or before December 14, 1990.

ADDRESSES: PBN Service Bulletin (SB) BN2/SB 194, dated April 11, 1990, applicable to this AD, may be obtained from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, PO36 5PR, England; telephone (44–983) 872511. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–32–AD, room 1558, 601 E. 12th Sreet, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Carl F. Mittag, Aircraft Certification Staff, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B–1000 Brussels, Belgium; telephone (322) 513.38.30 ext. 2710; Facsimile (322) 230.68.99; or Mr. John P. Dow, Sr., Small Airplane Directorate, Airplane Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426–6932; Facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as

they may desire. Communications should identify the regulatory docket and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. .

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report, summarizing each FAA-public contact concerned with the substance of this proposal, will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90–CE–32–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The manufacturer has discovered through service experience on PBN Limited Model BN–2T airplanes that if the engines were shut down either in flight or on the ground, and the starter generator switch remains in the on position, then current flowing in the field circuit of the starter/generator could cause a starter/generator circuit breaker (CB) trip and isolate the starter circuit. Since this condition is not covered by appropriate flight manual instructions, the pilot may not be able to identify the condition and thus, would be unable to restart the engine, which could result in a serious accident.

In addition to the manufacture's reports, the civil Aviation Authority of the United Kingdom (CAA–UK), which is the airworthiness authority of the UK, notified the FAA that an unsafe condition may exist on these PBN Limited Model BN–2T airplanes. The CAA–UK advises that these airplanes could have an undetected circuit breaker trip in the starter/restarter generator circuit after an engine shutdown that would prevent a restart. Pilatus Britten-Norman (PBN) Limited has issued PBN SB 194, dated April 11, 1990, which sets forth a modification to the starter/generator circuit that reduces the field circuit current and ensures that excitation voltage is available to the generator contactor. The CAA–UK classified this SB as mandatory and issued AD 022–04–90 to require the modification. These airplanes are manufactured in the United Kingdom and are type certificated for operation in the United States.

Under the provisions of a bilateral airworthiness agreement, the FAA relies upon the findings of the CAA–UK, combined with FAA review of pertinent information, in determining that AD action is necessary for products of this type design, certificated for operation in the United States.

Consequently, the FAA is proposing an AD that would require the modification of the starter/generator circuit on the PBN Model BN–2T Turbine Islander airplanes in accordance with PBN SB BN–2/SB 193, dated April 11, 1990.

While there are no BN–2T Turbine Islander airplanes currently listed on the U.S. registry, they may be imported at any time since they are type certificated in the United States. The cost of modifying the starter/generator circuit per the proposed AD is estimated to be $120 for labor and approximately $278 for parts for a total of $398 per airplane. There would be no cost to U.S. operators at this time, and even if airplanes were imported into the United States there would not be a significant financial impact on any small business entities operating these airplanes.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small business entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Pilatus Britten-Norman (PBN) Limited: Docket No. 90–CE–32–AD.

Applicability: Model BN–2T all serial numbers) Turbine Islander airplanes, certificated in any category, that do not have PBN Modification Number NB/M/1415 incorporated.

Compliance: Required within the next 200 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To ensure the ability to restart the engines in flight, accomplish the following:

(a) Modify the airplance electrical system as described in PBN Service Bulletin BN2/SB 194, dated April 11, 1990.

(b) Airplanes may be flown in accordance with § 21.197 of the FAR to a location where this AD may be accomplished.

(c) An alternate method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Staff. All persons affected by this directive may obtain copies of the document referred to herein upon request to Pilatus Britten-Norman Limited, Bembridge Airport, Isle of Wight, PO36 5PR, England; telephone (44–983) 872511; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 12, 1990.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–25348 Filed 10–25–90; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 90-ACE-16]

Proposed Designation of Transition Area—Washington, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice propose to designate a 700-foot transition area at Washington, Kansas, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Washington County Memorial Airport, Washington, Kansas, utilizing the Morrison NDB as a navigational aid. This proposed action would change the airport status from visual flight rules (VFR) to instrument flight rules IFR.

DATES: Comments must be received on or before November 30, 1990.

ADDRESSES: Send comments on the proposal to: Federal Aviation Administration, Manager, System Management Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 426-3408.

The official docket may be examined at the Office of the Assistant Chief Counsel, Central Region, Federal Aviation Administration, room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Manager, System Management Branch, Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis G. Earp, Airspace Specialist, System Management Branch, Air Traffic Division, ACE-530, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 462-3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the System Management Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before the closing date for comments will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obain a copy of this NPRM by submitting a request to the Federal Aviation Administration, System Management Branch, 601 East 12th Street, Kansas City, Missouri 64106, or by calling (816) 426-3408.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMS should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to subpart G, §71.181, of the Federal Aviation Regulations (14 CFR part 71) to designate a 700-foot transition area at Washington, Kansas. To enhance airport usage, a new instrument approach procedure is being developed for the Washington County Memorial Airport, Washington, Kansas, utilizing the Morrison NDB as a navigational aid. This navigational aid would provide new navigational guidance for aircraft utilizing the airport. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Washington, Kansas, at and above 700 feet above ground level within which aircraft are provided air traffic control service. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operations and while transiting between the terminal and en route environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under instrument flight rules (IFR) from other aircraft operating under visual flight rules (VFR). This action would change the airport status from VFR to IFR. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under this criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§71.181 [Revised]

2. Section 71.181 is amended as follows:

Washington, Kansas

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Washington County Memorial Airport (lat. 39°44'10" N., long. 97°02'51" W.); within 5.25 miles each side of the Morrison NDB lat. 39°45'42" N., long. 97°02'31" W.) 021° bearing extending from the 6.5-mile radius area to 13.5 miles north of the NDB.

Issued in Kansas City, Missouri on October 4, 1990.

Clarence E. Newbern,

Manager, Air Traffic Division, Central Region.

[FR Doc. 90-25349 Filed 10-25-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 90-AGL-17]

Proposed Transition Area Establishment; Two Harbors, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Two Harbors, MN, transition area to accommodate a new NDB Runway 24 Standard Instrument

Approach Procedure (SIAP) to Two Harbors Municipal Airport, Two Harbors, MN. The intended effect of this action is to ensure segregation of the aircraft using approach procedures under instrument flight rules from other aircraft operating under visual flight rules in controlled airspace.

DATES: Comments must be received on or before December 4, 1990.

ADDRESSES: Send comments on the proposal in triplicate to:

Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Attn: Rules Docket No. 90–AGL–17, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90–AGL–17". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Infomation Center, APA–430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being place on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish a transition area airspace near Two Harbors, MN. The transition area would be established to accommodate a new NDB Runway 24 SIAP to Two Harbors Municipal Airport.

The development of the procedure requires that the FAA alter the designated airspace to insure that the procedure would be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts would reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rules requirements. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation Safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Two Harbors, MN [New]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Two Harbors Municipal Airport (lat. 47°03'04" N., long. 91°44'32" W.); and within 3 miles each side of the 73° bearing from Two Harbors Municipal Airport extending from the 5-mile radius to 8.5 miles northeast of the airport.

Issued in Des Plaines, Illinois, on October 15, 1990.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 90–25350 Filed 10–25–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 90–ASO–4]

Proposed Establishment of Jet Route J–239; GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish new Jet Route J–239 between Atlanta, GA, and Meridian, MS. This jet route would provide precise navigation in the area and reduce controller workload by eliminating radar vectoring between Atlanta and Meridian.

DATES: Comments must be received on or before December 6, 1990.

ADDRESSES: Send comments on the proposal in triplicate to:

Manager, Air Traffic Division, ASO–500, Docket No. 90–ASO–4, Federal

Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-ASO-4." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 75 of the Federal Aviation Regulations (14 CFR part 75) to establish a new jet route between Atlanta, GA, and Meridian, MS. This new jet route would improve navigation between Atlanta and Meridian, thereby reducing controller workload by eliminating radar vectors and by providing a shorter route for that area. Section 75.100 of part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 75 of the Federal Aviation Regulations (14 CFR part 75) as follows:

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

1. The authority citation for part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-239 [New]

From Atlanta, GA, INT Atlanta 260°T(260°M) and Meridian, MS, 061°T(056°M) radials; to Meridian.

Issued in Washington, DC, on October 17, 1990.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90-25351 Filed 10-25-90; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-457, RM-7389]

Radio Broadcasting Services; Zolfo Springs, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Ted L. Hite, seeking the allotment of Channel 295A to Zolfo Springs, Florida, as that community's first local FM service. The coordinates for this proposal are North Latitude 27-22-00 and West Longitude 81-48-00.

DATES: Comments must be filed on or before December 14, 1990, and reply comments on or before December 31, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Cary S. Tepper, Putbrese, Hunsaker, & Ruddy, 6800 Fleetwood Road, Suite 100, P.O. Box 539, McLean, Virginia 22101 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-457, adopted September 28, 1990, and released October 23, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International

Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contracts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–25425 Filed 10–25–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–456, RM–7396]

Radio Broadcasting Services; Warrenton, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Radio Warrenton ("petitioner") requesting the substitution of Channel 226C3 for Channel 226A at Warrenton, Georgia, and modification of its construction permit (BPH–890613MH) to specify operations on the higher class channel. Channel 226C3 can be allotted to Warrenton in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.4 kilometers (8.3 miles) west of the city. The coordinates for this allotment are North Latitude 33–21–35 and West Longitude 82–47–40.

DATES: Comments must be filed on or before December 14, 1990, and reply comments on or before December 31, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Arthur V. Belendiuk, Smithwick & Belendiuk, P.C., 2033 M Street NW., Suite 207, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–456, adopted September 28, 1990, and released October 23, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contracts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–25424 Filed 10–25–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–454, RM–7436]

Radio Broadcasting Services; Clearwater, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Central K Communications proposing the allotment of Channel 254A to Clearwater, Kansas, as that community's first FM broacast service. The coordinates for Channel 254A are 37–27–21 and 97–3–48, with a site restriction 7.3 kilometers (4.5 miles) southwest of the community.

DATES: Comments must be filed on or before December 14, 1990, and reply comments on or before December 31, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Stanley G. Emert, Jr., Lockridge & Becker, P.C., Post Office Box 107, Knoxville, Tennessee 35401 (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–454, adopted September 27, 1990, and released October 23, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 2300, 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR Section 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Commnications Commision.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–25422 Filed 10–25–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90-459, RM-7386]

Radio Broadcasting Services; Clovis, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on petition by Alton Lloyd Finley, Jr., seeking the allotment of Channel 272C3 to Clovis, New Mexico, as the community's fifth local FM service. Channel 262C3 can be allotted to Clovis in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 36-24-06 and West Longitude 103-12-18.

DATES: Comments must be filed on or before December 14, 1990, and reply comments on or before December 31, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Alton Lloyd Finley, Jr., Rural Route #5, Box 442-M, Seneca, South Carolina 29678 (petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-459, adopted September 28, 1990, and released October 23, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25427 Filed 10-25-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-458, RM-7475]

Radio Broadcasting Services; Taos, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Taos County Radio seeking the substitution of Channel 260C for Channel 260C2 at Taos, New Mexico, and the modification of its construction permit for Station KRBJ to specify operation on the higher powered channel. Channel 260C2 can be allotted to Taos in compliance with the Commission's minimum distance separation requirements with a site restriction of 28.6 kilometers (17.7 miles) south to accommodate petitioner's desired transmitter site. The coordinates for Channel 260C at Taos are North Latitude 36-09-30 and West Longitude 105-29-30. In accordance with Section 1.420 of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 260C at Taos or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before December 14, 1990, and reply comments on or before December 31, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Stephen E. Coran, Esq., Brown Finn & Nietert, Chartered, 1920 N Street NW., Suite 660, Washington, DC. 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of proposed Rule Making, MM Docket No. 90-458, adopted September 28, 1990, and released October 23, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-25426 Filed 10-25-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-455, RM-7356]

Radio Broadcasting Services; Bloomer, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Starcom, Inc., proposing the substitution of FM Channel 236C3 for Channel 236A at Bloomer, Wisconsin, and modification of its construction permit for Station WPHQ(FM) to specify operation on Channel 236C3. The coordinates for Channel 236C3 are 45-00-30 and 91-19-59.

DATES: Comments must be filed on or before December 14, 1990, and reply comments on or before December 31, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20544. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant,

as follows: Richard J. Bodorff, Edward A. Yorkgitis, Jr., Wiley, Rein & Fielding, 1776 K Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–455, adopted September 27, 1990, and released October 23, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230)), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Kathleen B. Levitz,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–25423 Filed 10–25–90; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 507 and 510

[GSAR Notice No. 5–309]

General Services Administration Acquisition Regulation; Use of the Metric System in GSA Procurements

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR) that would provide guidance to GSA contracting activities concerning the use of the metric system of measurement in acquisition planning and in preparing solicitations to meet the requirements of section 5164 of the Omnibus Trade and Competitiveness Act of 1988, GSA Order ADM 8000.1A and the GSA Metric Transition Plan (55 FR 12904). The proposed change is also intended to encourage industries to make the conversion to the International System of Units (SI) and to invite them to make Federal agencies aware of their ability to supply conforming supplies and services in metric units.

DATES: Comments or suggestions may be submitted in writing on or before November 26, 1990.

ADDRESSES: Comments should be addressed to Marjorie Ashby, Office of GSA Acquisition Policy (VP), 18th and F Streets, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Paul L. Linfield, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Background

Section 5164 of the Omnibus Trade and Competitiveness Act of 1988 designates the metric system of measurement as the preferred system of weights and measures for U.S. trade and commerce and mandates certain requirements on Federal agencies, which are intended to stimulate this nation's conversion to the International System of Units. GSA, in issuing its GSA order, "GSA Metric Program" (ADM 8000.1A), and its Metric Transition Plan, met certain requirements of the statute. For a summary of the background and purpose of the statute and GSA's order and plan, the reader is directed to 55 FR 12904. Since the suggested language in this proposed rule has applicability for other Federal agencies, a revision to the Federal Acquisition Regulation has been proposed. Pending adoption of that change, guidance for GSA contracting activities is necessary.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this proposed rule.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), GSA certifies that this proposed rule will not have a significant impact on a substantial number of small entities because it is intended to provide internal guidance to GSA contracting activities to satisfy a current requirement that Federal agencies review, prepare and revise Federal documents and specifications to eliminate barriers to the use of the metric system in Federal procurements. Use of the metric system of measurement for Federal agency procurements is mandated by September 30, 1992, to the extent economically feasible, by section 5164 of the Omnibus Trade and Competitiveness Act of 1988, which amended the Metric Conversion Act of 1975. Consequently, no regulatory flexibility analysis has been prepared though comments from small entities are hereby solicited and will be considered in accordance with section 610 of the Regulatory Flexibility Act.

D. Paperwork Reduction Act

The proposed rule does not contain information collection requirements that require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 507 and 510

Government procurement.

1. The authority citation for 48 CFR parts 507 and 510 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 507—[AMENDED]

2. Section 507.103 is added to read as follows:

507.103 Agency head responsibilities.

The head of the contracting activity (HCA) shall ensure that, during the acquisition planning phase, requirements personnel consider the use of the metric system of measurement consistent with 15 U.S.C. 205 et seq. (see 510.002), GSA Order ADM 8000.1A, and GSA Metric Transition Plan. Use of the metric system must be coordinated with the contracting officer and be consistent with security, operational, economic, technical, logistical, training, and safety requirements.

PART 510—[AMENDED]

3. Section 510.001 is amended to add alphabetically a definition of "metric system" to read as follows:

510.001 Definitions.

Metric system means the International System of Units established by the General Conference of Weights and Measures in 1960. The units are listed in Federal Standard

376A, Preferred Metric Units for General Use by the Federal Government.

* * * * *

4. Section 510.002 is added to read as follows:

510.002 Policy.

(a) The Metric Conversion Act of 1975, as amended by section 5164 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205 et seq.), (1) designates the metric system of measurement as the preferred system of weights and measures for U.S. trade and commerce and (2) requires by September 30, 1992, each Federal agency, to the extent economically feasible, to use the metric system of measurements in its procurements, grants, and other business related activities. The GSA Metric Transition Plan, dated March 27, 1990, describes GSA's comprehensive and integrated program to comply with section 5164 and GSA Order ADM 8000.1A.

(b) Consistent with the policy expressed in GSA Order ADM 8000.1A, solicitations shall include specifications and purchase descriptions stated in metric units of measurement whenever metric is the accepted industry system. Whenever possible, commercially developed metric specifications and internationally developed voluntary standards using metric measurements must be adopted. While an industry is in transition to metric, solicitations should include specifications and purchase descriptions stated in soft metric, hybrid, or dual systems, when practical. To further the cultural change, solicitations should encourage offers of metric products.

Dated: October 22, 1990.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 90-25421 Filed 10-25-90; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF DEFENSE

Department of the Navy

48 CFR Parts 5243 and 5252

Navy Acquisition Procedures Supplement; Adjustments to Prices Under Shipbuilding Contracts

AGENCY: Department of the Navy, DOD.

ACTION: Proposed rule; extension of date for receipt of post hearing comments, and notice that records will be available for public review.

SUMMARY: The Department of the Navy promulgated proposed regulations on part 5243, subpart 5243.70 of Navy Acquisition Procedures Supplement (NAPS) to restrict contract price adjustments under shipbuilding contracts, thus implementing by regulation the requirements of 10 U.S.C. 2405. The Department also promulgated proposed amendments to part 5252 to add the text of a solicitation provision and a contract clause. The proposed regulation was published on June 29, 1990 at 54 FR 26708. That proposed regulation amended earlier proposed rules and, among other things, established August 23, 1990 as the date for a public hearing and September 6, 1990 as the date for receipt of post hearing comments. By notice of August 16, 1990 at 54 FR 33541, the date of the public hearing was changed to September 24, 1990 and the date for receipt of post hearing comments was changed to October 8, 1990. These dates are being amended as set forth below along with a notice of the availability of a public record.

DATES: A public hearing on the proposed rule will be held on November 9, 1990, commencing 9 a.m. Post hearing comments may be submitted until 5 p.m., e.s.t. December 7, 1990.

ADDRESSES: *Public record:* A record of this matter will be available for public review. This record will include the Federal register notices, public comments, questions, a transcript of the public hearing, and post hearing comments. Interested parties desiring to review this record should make arrangements with: Mr. Richard Moye, Office of the Assistant Secretary of the Navy (Research, Development and Acquisition), APIA-PP, Washington, DC 20350-1000. Mr Moye may be reached at (703) 602-2807.

Attendance: All interested persons desiring to attend the hearing should advise the above-named person of the name of the interested party, the number of expected attendees, and the telephone number for a designated point of contact. This will permit attendees to be contacted should there be a need to further changes the date, time or place set for the hearing.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Moye, (703) 602-2807.

Dated: October 12, 1990

Wayne T. Baucino,

LT. JAGC, USNR, Alternative Federal Register Liaison Office.

[FR Doc. 90-25255 Filed 10-24-90; 8:45 am]

BILLING CODE 3810-AE-M

Notices

Federal Register
Vol. 55, No. 208
Friday, October 26, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Breckenridge Ski Area Expansion Environmental Impact Statement; Arapaho National Forest, Summit County, CO

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement on a proposal from Breckenridge Ski Corporation to expand their existing permit boundary by 2,635 acres and to increase their existing skiers capacity by 7,000 skiers at one time (SAOT).

DATES: Comments concerning the scope of the analysis should be received in writing by January 1, 1991.

ADDRESSES: Send written comments to Jeff Bailey, District Ranger, Dillon Ranger District, 135 Highway 9, Blue River Center, P.O. Box 620, Silverthorne, Colorado 80498.

FOR FURTHER INFORMATION CONTACT: Stu Saucke, Dillon Ranger District, 135 Highway 9, Blue River Center, P.O. Box 620, Silverthorne, Colorado 80498, Phone: (303) 498–5400.

SUPPLEMENTARY INFORMATION: The Dillon Ranger District, where Breckenridge Ski Area is located, is on the Arapaho National Forest but is administered by the White River National Forest. The proponent Breckenridge Ski Corporation proposes to expand their existing permit boundary by 2,635 acres and to increase their existing capacity by 7,000 SAOT. Breckenridge Ski Corporation proposes to build a funicular (cable railway) at Peak 8 near the Colorado lift which has the capacity to transport 240 passengers at one time. A restaurant at the top of Peak 8 is proposed as well as an additional race area at Peak 8.

The existing permit boundary is within the 1B management area in the *White River Land and Resource Management Plan* (Forest Plan) which provides for existing and potential winter sports sites. A portion of the proposed expansion is outside of the 1B management area and would require an amendment to the Forest Plan.

The Forest Service joint review process will be initiated. Known interested publics will be notified in writing. The Forest Service will also make efforts to contract the general public through newsreleases, public meetings, etc.

Preliminary issues identified thus far are: Impacts to tundra environment, wildlife, travel routes of big game, wetlands, threatened and endangered plant species (if any), visual quality, changing of Forest Plan prescriptions, compatibility of a four-season resort with tundra environment, location of restaurant site, sufficient parking, cross country skiing versus downhill skiing across the Wheeler Tenmile National Recreation Trail, and cumulative impacts.

Preliminary alternatives identified thus far are: (1) No Action in which Breckenridge Ski Corporation's special use permit would not be amended to include any expansion outside of their current boundary, (2) Allow Breckenridge Ski Corporation to expand as proposed in their master development plan, and (3) Allow Breckenridge Ski Corporation to expand as modified by the environmental analysis.

The lead agency is the Forest Service, USDA. Comments may be sent in writing to Jeff Bailey, District Ranger, 135 Highway 9, Blue River Center, P.O. Box 620, Silverthorne, Colorado 80498.

The draft environmental impact statement is expected to be published for public review in August, 1991. The final environmental impact statement is expected to be published in May, 1992.

The Forest Service will seek comments on the draft environmental impact statement for a period of 45 days after publication of the draft environmental impact statement. The Forest Service will summarize and respond to the comments in the final environmental impact statement.

The responsible official is Thomas A. Hoots, Forest Supervisor, White River National Forest, 900 Grand Ave., P.O. Box 948, Glenwood Springs, Colorado 81602.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specified as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merit of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

Dated: October 18, 1990.

Thomas A. Hoots,

Forest Supervisor.

[FR Doc. 90–25331 Filed 10–25–90; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 40-90]

Proposed Foreign-Trade Zone—Miami, FL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Wynwood Community Economic Development Corporation (WCEDC), a Florida non-profit corporation, requesting authority to establish a general-purpose foreign-trade zone in the City of Miami, Florida, within the Miami Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zone Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 17, 1990. The applicant is authorized to make the proposal under § 288.36 of the 1989 Florida Statutes.

The proposed WCEDC project would be the third general-purpose zone project in the Miami Customs port of entry area. FTZ 32, located in Dade County four miles west of the Miami International Airport, was approved in 1977 (FTZ Board Order 123, 42 FR 46568, 9/16/77); and, FTZ 166 in Homestead, Florida, was approved in August 1990 (FTZ Board Order 482, 55 FR 34584, 8/23/90).

The WCEDC foreign-trade zone project involves a proposed site (13 acres) on Northwest Second Avenue at 22nd Street in the Wynwood Community of Miami, within a mile of the Port of Miami. The City of Miami recently agreed to donate the site to WCEDC for development as a foreign-trade zone. The site is also within a state-designated enterprise zone area.

The applicant contends that the additional zone is needed to provide zone services to the Wynwood area of the Miami port of entry as part of the economic development efforts underway in that community. Several firms have expressed an interest in using zone procedures for warehouse/distribution of products including apparel, rubber and plastics, electrical instruments and machinery. Specific manufacturing approvals are not being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Howard Cooperman, Deputy Assistant Regional Commissioner, U.S. Customs Service, Southeast Region, 909 SE First Avenue, Miami, Florida 33131–2595; and, Colonel Bruce A. Malson, District Engineer, U.S. Army Engineer District Jacksonville, P.O. Box 4970, Jacksonville, Florida 32232–0019.

Comments concerning the proposed zone are invited in writing from interested parties. They shall be addressed to the Board's Executive Secretary at the address below and postmarked on or before December 14, 1990.

As copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Federal Building, Suite 224, 51 SW., First Avenue, Miami, Florida 33130

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW., room 4213, Washington, DC 20230.

Dated: October 22, 1990.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 90-25408 Filed 10-25-90; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-122-047]

Elemental Sulphur From Canada; Final Results of Antidumping Duty; Administrative Review and Revocation in Part

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation in part.

SUMMARY: On July 13, 1990, the Department of Commerce published the preliminary results of its antidumping duty administrative review and intent to revoke in part the antidumping finding on elemental sulphur in Canada. The review covers seven producers and/or exporters and generally the period December 1, 1987 through November 30, 1988.

We gave interested parties an opportunity to comment on our preliminary results and intent to revoke in part. Based on our analysis of the comment received, our final results are unchanged from the preliminary results, and we revoke the antidumping finding in part with respect to four companies.

EFFECTIVE DATE: October 26, 1990.

FOR FURTHER INFORMATION CONTACT: Jospeh A. Fargo or Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5252.

SUPPLEMENTARY INFORMATION:

Background

On July 13, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 28795) the preliminary results of antidumping duty administrative review and intent to revoke in part the antidumping finding on elemental sulphur from Canada (December 17, 1973, 38 FR 34655). We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of elemental sulphur from Canada. During the period such merchandise was classifiable under item 415.4500 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under Harmonized Tariff System (HTS) item 2503.10.00. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers seven producers and/or exporters and the period December 1, 1987 through November 30, 1988.

Analysis of Comments

We gave interested parties an opportunity to comment on our notice of preliminary results. We received one comment from a respondent, InterRedec Sulphur Corporation.

Comment: InterRedec contends that the Department should issue a notice of intent to revoke in part the antidumping finding with respect to InterRedec. In support of its request, InterRedec notes that it has requested revocation from the finding three times. The Department's final results of review for the December 1, 1981 through November 30, 1982 period indicated that InterRedec was not making sales at less than fair value (50 FR 37889, September 16, 1985). The Department has also published its final results of review for the December 1, 1982 through November 30, 1986 period, indicating no sales at less than fair value by InterRedec (55 FR 28794, July 13, 1990). Even though InterRedec has demonstrated no sales at less than fair value for five review periods, the Department has yet to act on InterRedec's requests for revocation. Because it has met the requirements of

the Department's regulations (19 CFR 353.25(a)), InterRedec maintains that the Department should issue a notice of intent to revoke in part the antidumping finding on elemental sulphur from Canada.

Department's Position: We will consider InterRedec's request for revocation in the administrative review of the period December 1, 1988 through November 30, 1989, which we initiated on February 16, 1990 (55 FR 5640).

Final Results of Review

Based of our analysis of the comment received, our final results of review are unchanged from those presented in the notice of preliminary results of review, and we determine that the following margins exist:

Producer/ Exporter	Period of review	Margin (Percent)
BP Resources Canada	12/01/87-3/2/89	0
Cornwall Chemicals	12/01/87-3/2/89	[1] 3.84
Home Oil	12/01/87-3/2/89	0
InterRedec	12/01/87-11/30/88	0
Petro-Canada	12/01/87-11/30/88	0
Sulco Chemicals	12/01/87-11/30/88	0
Suncor	12/01/87-3/2/89	[1] 0

[1] No shipments during the period; margins from last review in which there were shipments.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for these firms. For any shipments of this merchandise produced or exported by the remaining known producers and/or exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for these firms. For any future entries of this merchandise from a new producer and/or exporter, not covered in this or prior administrative reviews, whose first shipments occurred after November 30, 1988, and who is unrelated to the reviewed firms or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Canadian elemental sulphur entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

Revocation in Part

For the reasons set forth in the preliminary results, and because we are satisfied that there is no likelihood of resumption of sales at less than fair value, we revoke in part the antidumping finding on elemental sulphur from Canada. This partial revocation applies to all unliquidated entries of this merchandise exported by B.P. Resources, Cornwall Chemical, Home Oil, and Suncor for consumption on or after March 2, 1989, the date of our tentative revocation in part with respect to these firms (54 FR 8770). The Department shall instruct the Customs Service to assess antidumping duties on all appropriate entries.

This administrative review, tentative revocation in part, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)), 19 CFR 353.54 (1988), and 19 CFR 353.22 (1990).

Dated: October 19, 1990.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-25409 Filed 10-25-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-045]

Steel Wire Rope From Japan; Determination Not To Revoke Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on steel wire rope from Japan.

EFFECTIVE DATE: October 26, 1990.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION: On October 2, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 40212) its intent to revoke the antidumping finding on steel wire rope from Japan (38 FR 28571, October 15, 1973). The Department may revoke an order if the Secretary concludes that the order is no longer of interest to interested parties. We had not received a request for an administrative review of the finding for the last four consecutive annual anniversary months and therefore published a notice of intent to revoke pursuant to 19 CFR 353.25(d)(4) (1990).

On October 10, 1990, the Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers objected to our intent to revoke the finding. Therefore, we no longer intend to revoke the finding.

Dated: October 18, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-25294 Filed 10-25-90; 8:45 am]

BILLING CODE 3510-DS-M

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: October 26, 1990.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with § 353.22(a)(1) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings and suspension agreements. We intend to issue the final results of these reviews not later than September 30, 1991.

Antidumping duty proceedings and firms	Periods to be reviewed
Canada:	
Paving Equipment	
A-122-057	
Allatt Paving Equipment	09/01/89-08/31/90
New Steel Rails	
A-122-804	
Algoma Steel Corp.	09/20/89-08/31/90
United Kingdom:	
Certain Forged Steel Crankshafts	
A-412-602	
United Engineering & Forging	09/01/89-08/31-90

Countervailing duty proceedings	Periods to be reviewed
Argentina:	
Certain Welded Carbon Steel Pipe and Tube Products	
C-357-801	01/01/89-12/31/89
Canada:	
Fresh Chilled and Frozen Pork	
C-122-807	05/08/89-03/31/90
Mexico:	
Portland Hydraulic Cement and Cement Clinker	
C-201-013	01/01/89-12/31/89
New Zealand:	
Lamb Meat	
C-614-503	04/01/89-03/31/90

Suspension agreements	Period to be reviewed
Argentina:	
Carbon Steel Wire Rod	
C-357-004	01/01/89-12/31/89

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) and 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) (1989) and 355.22(c) (1988).

Dated: October 17, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-25292 Filed 10-25-90; 8:45 am]

BILLING CODE 3510-25-M

[A-403-801, C-403-802]

Postponement of Final Antidumping Duty and Final Countervailing Duty Determinations and Postponement of Public Hearings: Fresh and Chilled Atlantic Salmon from Norway

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the counsel for respondents in the antidumping duty investigation to postpone the final determination, as permitted in section 735(a)(2) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673(a)(2)). Based on this request, we are postponing our final determination as to whether sales of fresh and chilled Atlantic salmon from Norway have occurred at less than fair value until not later than February 15, 1991. In accordance with 705(a)(1) of the Act (19 U.S.C. 1671d(a)(1)), the final determination in the countervailing duty determination will also be postponed until not later than February 15, 1991.

EFFECTIVE DATE: October 26, 1990.

FOR FURTHER INFORMATION CONTACT: Tracey Oakes (AD) (202) 377-3174, Louis Apple (AD) (202) 377-1769, Rick Herring (CVD) (202) 377-3530, or Elizabeth Graham (CVD) (202) 377-4105, Offices of Antidumping and Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On Ocrober 5, 1990 counsel for respondents in the antidumping duty investigation requested that the Department postpone the final determination until not later than 135 days after the date of publication of the preliminary determination, in accordance with section 735(a)(2) of the Act. Accordingly, we are postponing the date of the final determination until not later than February 8, 1991. On August 7, 1990, we published a notice in the **Federal Register** (55 FR 32107) aligning the final determination of the countervailing duty determination with the final determination of the antidumping duty determination. This was done at the request of petitioner under section 705(a)(1) of the Act (19 U.S.C. 1671d(a)(1)). Therefore, we are also postponing the date of the final determination of the countervailing duty determination until not later than February 8, 1991.

The case briefs in the antidumping duty investigation are now due on January 14, and rebuttal briefs are due on January 22, 1991. The hearing will be held on January 24, 1991. The public hearing for the countervailing duty investigation which was scheduled for November 7, will now be held on December 17, 1990, at 10 a.m. at the U.S. Department of Commerce, room 1412, 14th Street and Constitution Avenue NW., Washington DC. Case briefs in the countervailing duty investigation are now due on December 10, and rebuttal briefs are now due on December 14, 1990.

The U.S. International Trade Commission is being advised of this postponement in accordance with sections 705(d) and 735(d) of the Act. This notice is published pursuant to sections 705(d) and 735(d) of the Act and 19 CFR 355.20(c)(3) and 353.20(b)(2).

Dated: October 19, 1990.

Majorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-25295 Filed 10-23-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-004]

Certain Carbon Steel Wire Rod From Argentina; Determination Not To Terminate Suspended Investigation

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to terminate suspended investigation.

SUMMARY: The Department of Commerce is notifying the public of its determination not to terminate the suspended countervailing duty investigation on certain carbon steel wire rod from Argentina.

EFFECTIVE DATE: October 26, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Barbara Williams, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1990, the Department of Commerce ("the Department") published in the **Federal Register** (55 FR 35704) its second notice of intent to terminate the suspended countervailing duty investigation on certain carbon steel wire rod from Argentina (September 27, 1982, 47 FR 42393). The first notice of intent to terminate the suspended investigation was published last year, at which time the Department received an objection to termination from the petitioners and interested parties. We did not, however, receive a request for an administrative review at that time.

The Department will terminate a suspended investigation if the Secretary concludes that the agreement is no longer of interest to interested parties. 19 CFR 355.25(d)(4) On September 13, 1990, four petitioners, Atlantic Steel Company, Georgetown Steel Corporation, North Star Steel Texas Incorporated and Raritan Steel Company, objected to the Department's second notice of intent to terminate this suspended investigation. On September 13, 1990, one interested party, Bethlehem Steel Corporation, objected to the Department's intent to terminate this suspended investigation. In addition, on September 28, 1990, the petitioners, requested that the Department conduct an administrative review of the agreement suspending the countervailing duty investigation on certain carbon steel wire rod from Argentina for the period January 1, 1989 through December 31, 1989. Therefore, we no longer intent to terminate the suspended investigation.

This notice is published in accordance with § 355.25(d)(4) of the Commerce Department's regulations. 19 CFR 355.25(d)(4)(1990)

Dated: October 18, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 90-25293 Filed 10-25-90; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Application for an amendment to an export trade certificate of review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 87-3A009."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 87-00009, issued on August 27, 1987 (52 FR 22368, June 11, 1987).

Summary of the Application

Applicant: California Cherry Export Association, 48 E. Oak Street, Lodi, California 95240.

Contact: James C. Christie, General Manager, telephone: (209) 368-0685.

Application No.: 87-3A009.

Date Deemed Submitted: October 15, 1990.

The California Cherry Export Association (CCEA) seeks to amend its Certificate by (1) adding the following companies as "Members" of the Certificate: All State Packers, Inc., Lodi, CA; Felix Costa & Sons, Lodi, CA; and Hillview Packing Company, Lodi, CA; (2) expanding the covered export markets to include all parts of the world except the U.S.; and (3) revising the list of directors of CCEA to include the General Manager and representatives of the newly proposed Members.

Dated: October 22, 1990.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 90-25364 Filed 10-25-90; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Ad Hoc Bycatch Committee (AHBC) and Data Gathering Committee will hold separate public meetings, at the National Marine Fisheries Service (NMFS) Alaska Fisheries Science Center, 7600 Sand Point Way, NE., Building 4, room 2079, Seattle, WA, as indicated below.

On October 30, 1990, at 9 a.m., the AHBC will: (1) Review a vessel incentive program to reduce prohibited species bycatch rates in the groundfish fisheries and, if time permits, (2) review the AHBC's "comprehensive" proposal for bycatch management.

Development of a vessel incentive program to reduce bycatch rates in the groundfish fisheries has become a critical issue as the Council anticipates disapproval by the Secretary of Commerce of the incentive program adopted as a portion of the Amendment 16/21 package to the Groundfish Fishery Management Plans for the Bering Sea/Aleutian Islands and the Gulf of Alaska, respectively. If this element of the package is disapproved, the Council will need to act expeditiously to prepare a substitute incentive program which can be implemented early in 1991. For more information contact Hal Weeks at the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

On November 20, 1990, the Council's Data Gathering Committee will meet at 9 a.m., to receive reports on the 1990 data gathering program and proposed changes to the 1991 program. The Committee also will receive a status report on a proposed user-fee system, review system options, and develop a

work schedule. For more information contact Steve Davis, Deputy Director, North Pacific Fishery Management Council, at the Council Office, address, above.

Dated: October 22, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-25335 Filed 10-25-90; 8:45 am]

BILLING CODE 3510-22-M

Notice of Sea Grant Review Panel Meeting

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will provide and discuss follow-up reports of business transacted at the last Sea Grant Review Panel Meeting in the areas of artificial intelligence, scientific misconduct, developing new business initiatives with the Sea Grant Program for enhancement of Department of Commerce goals, and new business. A nomination and election will be held for Chair Elect

DATES: The announced meeting is scheduled during two days: Tuesday, November 13, 1990, 4:30–6:30 p.m. and Wednesday, November 14, 1990, 8–10 a.m.

ADDRESSES: The Westin Crown Center, One Pershing Road, The Westport room, Kansas City, Missouri 64108.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Shephard, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1335 East-West Highway, #5104, Silver Spring, Maryland 20910, (301) 427–2431.

SUPPLEMENTARY INFORMATION: The Panel, which consists of balanced representation from academia, industry, state government, and citizens groups, was established in 1976 by section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128) and advises the Secretary of Commerce, Under Secretary, NOAA, and the Director of the National Sea Grant College Program with respect to operations under the act, and such other matters as the Secretary refers to the Panel for review and advice. The agenda for the meeting is:

Tuesday, November 13, 1990—4:30–6:30 p.m.

Committee Reports, USDA National Extension Committee, New Technology, Coastal Business Initiatives, Scientific Law and Policy, Use of State Advisory Committees, Panel Member Status, New Funding Procedures, Planning Task Forces, Site Visits, Communication Update, Panel Chair Elect (Nomination and Election).

Wednesday, November 14, 1990—8–10 a.m.

Good of the Panel, New Business.

The meeting will be open to the public.

Dated: October 22, 1990.

Alan R. Thomas,

Acting Assistant Administrator, Oceanic and Atmospheric Research.

[FR Doc. 90-25382 Filed 10-25-90; 8:45 am]

BILLING CODE 3510-12-M

South Atlantic Fishery Management Council; Meeting Notice Addendum: Closed Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The meeting notice, previously published at 55 FR 41122 on October 9, 1990, has been amended to include notice of closed meetings for the South Atlantic Fishery Management Council (Council), and the Council's Committees at the Shell Island Resort Hotel, 2700 Lumina Boulevard, Wrightsville Beach, NC, as stated below. All other information as originally published remains unchanged.

The Council's Advisory Panel Selection and Personnel Committees both will hold separate closed meetings (not open to the public) on November 1, 1990. The Advisory Panel Selection Committee will begin meeting at 8:30 a.m. and will adjourn at 9:30 a.m. The Personnel Committee will begin meeting at 1:30 p.m. and will adjourn at 2:15 p.m.

The Committees' reports will be presented on November 2 to the Council, during a closed meeting.

For more information contact Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407, telephone: (803) 571–4366.

Dated: October 19, 1990.

David S. Crestin,

Deputy Director, Officer of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-25336 Filed 10-25-90; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1990 a commodity to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: November 26, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On September 7, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (55 FR 36847) of proposed addition to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540). After consideration of the material presented to it concerning the capability of a qualified workshop to produce this commodity at a fair market price, the impact of the addition on the current or most recent contractor, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 52–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.
b. The action will not have a serious economic impact on any contractors for the commodity listed.
c. The action will result in authorizing small entities to produce the commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1990:

Belt, High Visibility,
8465–01–163–8835.

This action does not affect contracts awarded prior to the effective date of

this addition or options exercised under those contracts.

H.G. Fischer,

Associate Director for Facility Operations.

[FR Doc. 90-25386 Filed 10-25-90; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1990 commodities to be produced by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: November 26, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540):

Rod, Straight, Headless
5340-01-102-4539
Correction Fluid
7510-00-176-8949

H.G. Fischer,

Associate Director for Facility Operations.

[FR Doc. 90-25387 Filed 10-25-90; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before November 26, 1990.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to James O'Donnell, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: James O'Donnell, (202) 708-5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its stautory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from James O'Donnell at the address specified above.

Dated: October 22, 1990.

James O'Donnell,

Acting Director, for Office of Information Resources Management.

Office of Planning of Budget, and Evaluation

Type of Review: Reinstatement.

Title: National Asessment of Educational Progress (NEAP) 1991 Field Test: and 1991-92 Assessment Background/Attitude 1991 Field Test: Reading, Mathematics and Writing.

Frequency: One time only.

Affected Public: Individuals or households; State or local governments.

Reporting Burden:

Responses: 23,920.

Burden Hours: 22,556.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: Congress mandated the collection of the National assessment survey data. Development of background questions and exercises, as well as field testing of items for the 1991-92 assessments in reading, mathematics and writing, including the Trial State Assessment Program will occur during the 1990-91 school year. The data will be useful for policymakers in education, research, legislatures, and the public.

[FR Doc. 90-25330 Filed 10-25-90; 8:45 am]

BILLING CODE 4000-1-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/SD(EU)-63, for the transfer of 4 irradiated fuel rods from the Federal Republic of Germany to Switzerland for storage. The fuel rods contain 5,212 grams of uranium,

enriched to 1.32 percent in the isotope uranium-235, and 58 grams of plutonium.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC, on October 22, 1990.

Richard H. Williamson,

Associate Deputy Assistant Secretary for International Affairs.

[FR Doc. 90-25417 Filed 10-25-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER91-25-000, et al.]

Tampa Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 18, 1990.

Take notice that the following filings have been made with the Commission:

1. Tampa Electric Co.

[Docket No. ER91-25-000]

Take notice that on October 12, 1990, Tampa Electric Company (Tampa Electric) tendered for filing a Letter of Commitment providing for the sale by Tampa Electric to Seminole Electric Cooperative, Inc. (Seminole) of 150 megawatts of capacity and energy. Tampa Electric states that the Letter of Commitment is submitted as a supplement to Service Schedule J (negotiated interchange service) under the existing agreement for interchange service between Tampa Electric And Seminole, designated as Tampa Electric Rate Schedule FERC No. 22.

Tampa Electric proposes an effective date of October 13, 1990 for the commitment of capacity and energy, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Seminole and the Florida Public Service Commission.

Comment date: November 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Public Service Co. of Indiana, Inc.

[Docket No. ER89-672-004]

October 18, 1990.

Take notice that on October 15, 1990, PSI Energy, Inc. (PSI), formerly named Public Service Company of Indiana, Inc., submitted its Compliance Filing in the above-captioned dockets concerning its Rate Schedule FS-1 and its Transmission Service Tariff. This Compliance Filing was submitted pursuant to the requirements of the Commission's Opinion Nos. 349 and 349-A.

Copies of the Compliance Filing have been served on the Indiana Utility Regulatory Commission, the Attorney General of the State of Indiana, the Utility Consumer Counselor, the Indiana Municipal Power Agency, the Wabash Valley Power Association, the City of Logansport, Indiana, PSI's existing wholesale customers who purchase under Rate MUN and Rate REMC-1, and upon persons who have intervened in this docket.

Comment date: November 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Northern States Power Co. (Wisconsin)

[Docket No. ER91-24-000]

Take notice that on October 11, 1990, Northern States Power Company-Wisconsin (NSP-W) filed for a rate decrease. NSP-W states that the purpose of its filing is to eliminate entirely the rate increase aspect of its recent filing in Docket No. ER90-544-000. NSP-W requests waiver of the prior notice provisions and an effective date of October 11, 1990, the same date that the Commission authorized NSP-W's increase in Docket No. ER90-544-000 to take effect.

Comment date: November 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Niagara Mohawk Power Corp.

[Docket No. ES90-54-000]

October 18, 1990.

Take notice that on October 11, 1990, the Niagara Mohawk Power Corporation (the Company) tendered for filing an applicant pursuant to section 204 of the Federal Power Act, seeking authority to issue and renew drafts issued pursuant to a Bankers Acceptance Facility Agreement in an aggregate principal amount outstanding at any time in an amount not exceeding $100,000,000 and short-term unsecured notes, commercial paper and other obligations in an aggregate principal amount outstanding at any time in an amount exceeding an amount equal to 10% of the aggregate of total consolidated surplus and secured indebtedness of the Company plus $50,000,000 maturing, in each case, less than one year after the date of issuance. The short-term debt will be issued on or before December 31, 1992, with a final maturity date no later than December 31, 1993.

Comment date: November 9, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Idaho Power Co.

[Docket No. ER91-23-000]

October 18, 1990.

Take notice that on October 11, 1990, Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during March through October 7, 1989, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Co...	Supplement No. 82.
Sierra Pacific Power Co..	Supplement No. 82.
Pacific Power & Light Co..	Supplement No. 28.
Portland General Electric.	Supplement No. 64.
Montana Power Co.....	Supplement No. 61.
Washington Water Power Co..	Supplement No. 62.
Puget Sound Power & Light Co..	Supplement No. 37.
Pacific Gas & Electric Co..	Supplement No. 37.
Seattle City Light	Supplement No. 1.
City of Burbank	Supplement No. 33.
City Pasadena.....	Supplement No. 31.
San Diego Gas & Electric.	Supplement No. 33.
California Dept. of Water Resource.	Supplement No. 9.
Los Angeles Dept. of Water & Power.	Supplement No. 40.
Sacramento Municipal Utility Dist..	Supplement No. 8.
Southern California Edison.	Supplement No. 44.
City of Glendale.....	Supplement No. 35.
Western Area Power Administration.	Supplement No. 5.

Comment date: November 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Pacific Gas and Electric Co.

[Docket No. ER91-27-000]

October 18, 1990.

Take notice that on October 15, 1990, Pacific Gas and Electric Company (PG&E) tendered for filing a Letter of Understanding (Letter Agreement) concerning the Western Systems Power Pool Agreement (Power Agreement) and the Interconnection Agreement between PG&E and the City of Santa Clara (Interconnection Agreement).

The City of Santa Clara (CSC) wishes to become a member of the Western System Power Pool (WSPP), and requires transmission services from PG&E to do so. The Letter Agreement clarifies how PG&E will provide transmission services for the transactions under the Pool Agreement. It specifies which transmission services for WSPP transactions shall be provided under the Pool Agreement and which shall be provided under the Interconnection Agreement. All firm transmission services for WSPP firm power purchases and sales will be provided by PG&E will be under the Pool Agreement. All interruptible transmission services provided by PG&E will be under the Interconnection Agreement. WSPP transactions will be billed separately from Interconnection Agreement transactions, and compensation for WSPP transaction will in no way effect either party's obligation for services offered under the Interconnection Agreement.

Copies of this filing have been served upon CSC, the WSPP participants, the California Public Utilities Commission, and those parties who have intervened in previous WSPP dockets.

Comment date: November 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

7. Puget Sound Power & Light Co.

[Docket No. ER91-28-000]

October 18, 1990.

Take notice that Puget Sound Power & Light Company ("Puget") on October 15, 1990 tendered for filing, as an initial rate schedule, the Sale and Exchange Agreement between the United States of America, Department of Energy, acting by and through the Bonneville Power Administration ("Bonneville"), and Puget, executed as of November 23, 1988.

The Agreement provides for a sale by Bonneville of power and energy to Puget which converts to a seasonal exchange during which Puget and Bonneville will exchange power and energy as described in the Agreement.

Puget requests an effective date of November 1, 1988, the beginning of the term as set forth in the Agreement.

A copy of the filing has been mailed to Bonneville.

Comment date: November 1, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Kansas Gas and Electric Co.

[Docket No. ES91-2-000]

October 18, 1990.

Take notice that on October 16, 1990, Kansas Gas and Electric Company (Applicant) filed an application pursuant to Section 204 of the Federal Power Act seeking authority to issue not more than $250 million of unsecured promissory notes on or before December 31, 1992, with a final maturity date no later than December 31, 1993.

Comment date: November 15, 1990, in accordance with Standard Paragraph E at the end of this notice.

9. Gary Hibbert

[Docket No. QF90-236-000]

October 18, 1990.

On September 21, 1990, Gary Hibbert (Applicant), of Route 3, Box 38, Hudson, Kansas 67545, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in the geographical area confined in Ellis, Russel, Rush, and Barton Counties, Kansas. The facility will consist of combustion turbine generators with a total electric power production capacity of 20 MW. Applicant proposes to deliver biochemically produced methane gas to a natural gas pipeline system and utilize an equivalent amount of natural gas from that system as the primary energy source for the facility.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

10. Baltimore Gas and Electric Co.

[Docket No. ES91-3-000]

October 18, 1990.

Take notice that on October 17, 1990, Baltimore Gas and Electric Company (Applicant) filed an application pursuant to Section 204 of the Federal Power Act seeking authority to issue not more than $500 million of short-term unsecured promissory notes and commercial paper with a final maturities no later than December 31, 1993 and not more than $100 million of unsecured medium-term promissory notes with final maturities no later than December 31, 1993.

Comment date: November 16, 1990, in accordance with Standard Paragraph E end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules (18 CFR.385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-25316 Filed 10-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9340-000 Maine]

Lawrence E. and Veronica P. Smith; Availability of Environmental Assessment

October 18, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Kezar Falls Hydroelectric Project located on the Ossipee River in Cumberland and York Counties, near Kezar Falls, Maine, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-25317 Filed 10-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-154-000, et al.]

U-T Offshore Systems, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. U-T Offshore Systems

[Docket No. CP91-154-000]

October 18, 1990.

Take notice that on October 15, 1990, U-T Offshore Systems (U-TOS), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP91-154-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Centran Corporation (Centran), a marketing company, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-99-000, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

U-TOS requests authorization to transport, on an interruptible basis, up to a maximaum of 37,000 Mcf of natural gas per day for Centran from a receipt point located in Offshore Louisiana to a delivery point located in Cameron Parish, Louisiana. U-TOS anticipates transporting 37,000 Mcf of natural gas on an average day and an annual volume of 13,505,000 Mcf. U-TOS advises that service under § 284.223(a) commenced August 13, 1990, as reported in Docket No. ST90-4729-000.

Comment date: December 3, 1990, in accordance with Standard Paragraph G at the end of this notice.

2. Lone Star Gas Co.

[Docket No. CP91-141-000]

October 18, 1990.

Take notice that on October 12, 1990, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP91-141-000, as supplemented on October 17, 1990, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to add a new delivery point for the transportation of natural gas for Coastal States Gas Transmission Company (Coastal), under the blanket certificate issued in Docket No. CP83-59-000, as amended, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Lone Star proposes to add a new delivery point for gas transported by Lone Star through the interstate portion of its facilities for Coastal under the authorization granted in Docket No. CP87-190-000, as amended. Lone Star states that the proposed delivery point will be located on its Line T at Sta. 480+54 at a new point of interconnection between Lone Star's interstate facilities and Lone Star's intrastate facilities as established in the order issued in Docket Nos. CP89-1742-000 and CP89-1743-000 on October 4, 1990. Lone Star states that no authorization for construction or retirement of facilities to add the new delivery point is requested herein.

Comment date: December 3, 1990, in accordance with Standard Paragraph G at the end of this notice.

3. Trunkline Gas Co.

[Docket No. CP91-182-000]

October 19, 1990.

Take notice that on October 17, 1990, Trunkline Gas Company (Trunkline), Post Office Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP91-182-000 a request pursuant §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Catamount Natural Gas, Inc. (Catamount), under Trunkline's blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Trunkline proposes to transport on an interruptible basis up to 150,000 Mcf of natural gas on a peak day, 27,397 Mcf on an average day, and 10,000,000 Mcf on an annual basis for Catamount. Trunkline states that it would perform the transportation service for Catamount under Trunkline's Rate Schedule PT. Trunkline indicates that it would receive the gas from various existing points of interconnection in the states of Illinois, Louisiana, Tennessee, and Texas; from the Panhandle Eastern Pipe Line Company point of interconnection at Douglas County, Ilinois; and from the areas of offshore Louisiana and offshire Texas. Trunkline states that it would then deliver the gas, less fuel and unaccounted for line loss, to Columbia Gulf Transmission Company at Centerville in St. Mary Parish, Louisiana.

It is explained that the service commended September 1, 1990, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST90-5299. Trunkline indicates that no new facilities would be necessary to provide the subject service.

Comment date: December 3, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. Florida Gas Transmission Co.

[Docket No. CP91-65-000]

October 18, 1990.

Take notice that on October 5, 1990, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP91-65-000, an application pursuant to section 7(c) of the Natural Gas Act and part 157 of the Commission's Regulations hereunder, for a certificate of public convenience and necessity authorizing FGT to construct, own and operate approximately 36 miles of 18-inch pipeline and related appurtenances (Connecting Facilities) to connect FGT's existing St. Petersburg and Sarasota Laterals. The proposed Connecting Facilities will extend from a point near FGT's Compressor Station No. 30 on FGT's St. Petersburg Lateral to a point approximately 2.3 miles north of State Road 62 where FGT's Sarasota Lateral intersects State Road 39. The Connecting Facilities will enhance the operational flexibility and integrity of FGT's pipeline system and also enable FFT to offer available capacity to existing customers and potentially to new markets during certain reasons, thus allowing maximum utilization of FGT's system.

Comment date: November 8, 1990, in accordance with Standard Paragraph F at the end of this notice.

5. High Island Offshore System

[Docket Nos. CP91-178-000, CP91-179-000, and CP91-180-000]

October 19, 1990.

Take notice that on October 17, 1990, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket Nos. CP91-178-000, CP91-179-000, and CP91-180-000 requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorizations to transport natural gas on an interruptible basis pursuant to HIOS's Rate Schedule IT on behalf of various shippers under HIOS's blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-82-000, all as more fully set forth in the prior notice requests which are on file with the Commssion and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the peak day, average day and annual volumes, and the initiation

[1] These prior notice requests are not consolidated.

service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by HIOS and is summarized in the attached appendix. It is explained that the gas would be received by HIOS at existing points located in the High Island and West Cameron Areas, offshore Texas and offshore Louisiana respectively, and redeliver the gas for the various accounts at existing interconnections located in offshore Texas and offshore Louisiana.

Comment date: December 3, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No.	Shipper	Volumes—Mcf (Peak day, average annual)	Related docket	Commencement date
CP91-178-000	Associated Natural Gas Inc.	290,000 290,000 105,850,000	ST90-4528	Aug. 18, 1990.
CP91-179-000	E P Operating Company, LP	71,500 71,500 26,097,500	ST90-4533	Aug. 21, 1990.
CP91-180-000	Calcasieu Gas Gathering System	140,000 140,000 51,100,000	ST90-4527	Aug. 21, 1990.

[1] HIOS reported the 120-day transportation service in the referenced ST dockets.

6. Panhandle Eastern Pipe Line Co. and Columbia Gulf Transmission Co.

[Docket Nos. CP91-157-000[2], CP91-158-000, CP91-159-000, and CP91-160-000]

October 19, 1990.

Take notice that on October 15, 1990, Texas Gas Transmission Corporation (Applicant), filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: December 3, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day [1] average annual	Point of Receipt	Point of Delivery	Start up date rate schedule	Related [2] dockets
CP91-157-000 10-15-90	Panhandle Transmission Company, P.O. Box 1642, Houston, TX 77251-1642.	Anadarko Trading Company.	50,000 50,000 18,250,000	CO, IL, KS, MI, OH, OK, TX.	OK	PT Interruptible 9/1/90	CP86-585-000, ST90-4865-000.
CP91-158-000 10-15-90	Panhandle Transmission Company, P.O. Box 1642, Houston, TX 77251-1642.	Amgas, Inc.	70 35 25,550	KS, WY, CO, OK, TX.	IL	PT Interruptible 9/1/90	CP86-585-000, ST90-4868-000.
CP91-159-000 10-15-90	Panhandle Transmission Company, P.O. Box 1642, Houston, TX 77251-1642.	Amgas, Inc.	60 30 21,900	KS, CO, OK, TX	IL	PT Interruptible 9/1/90	CP86-585-000, ST90-4867-000.
CP91-160-000 10-15-90	Columbia Gulf Transmission Company, 3805 West Alabama, Houston, TX 77027	Anadarko Trading Company.	75,000 20,000 7,30,000	Onshore Offshore LA.	LA	ITS-2 Interruptible	CP86-239-000, ST90-4862-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

7. Williams Natural Gas Co.

[Docket No. CP91-156-000]

October 19, 1990.

Take notice that on October 15, 1990, Williams Natural Gas Company (WNG) P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP91-156-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas on an interruptible basis for Centran Corporation (Centran) under the blanket certificate issued in Docket No. CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

WNG states that it proposes to transport, on an interruptible basis, up to 20,000 dth of natural gas per day for Centran from various receipt points in Colorado, Kansas, Missouri, Oklahoma, Texas, and Wyoming to various delivery points on WNG's pipeline system located in Kansas.

WNG also states that the estimated average day and annual quantities would be 20,000 and 7,300,000 dth, respectively.

WNG further states that it commenced their service on August 1, 1990, as reported in Docket No. ST91-9-000.

Comment date: December 3, 1990, in accordance with Standard Paragraph G at the end of this notice.

8. Northwest Pipeline Corp.

[Docket No. CP91-167-000]

October 19, 1990.

Take notice that on October 16, 1990, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed a request with the Commission in Docket No. CP91-167-000, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA), for authorization to construct and operate a new meter station, under Northwest's blanket certificate issued in Docket No. CP82-433-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

Northwest proposes to construct and operate the Chevron Rangely meter station in Rio Blanco County, Colorado, in order to deliver up to 12,000 MMBtu of natural gas per day to Chevron U.S.A., Inc. Northwest states that it estimates the proposed meter station's construction cost at $170,260. Northwest also states that Chevron would install approximately 600 feet of six-inch pipeline from the proposed meter station to a tie-in point on Chevron's existing fuel gas system.

Comment date: December 3, 1990, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene if filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary

[FR Doc. 90-25318 Filed 10-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-164-000, et al.]

United Gas Pipe Line Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Co.

[Docket No. CP91-164-000]

October 17, 1990.

Take notice that on October 16, 1990, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP91-164-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point as a sales tap to provide additional natural gas to Entex Inc. (Entex), a local distributor, under the certificate authorization issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United proposes to construct and operate a 2-inch sales tap to be located on United's 8-inch Bogalusa-Amite Line in the vicinity of Enon, St. Tammany Parish, Louisiana. United states that the new sales tap would enable United to supply an estimated average of 180 Mcf per day of natural gas to Entex for resale to an industrial customer, Barriere Construction Co., Inc.

United states that this new sales tap for Entex would not result in an increase in Entex's aggregate base requirements or contractual MDQ. United further states that the total certificated entitlements of the Entex Bogalusa Billing Area is 15,453 Mcf per day, which is the contracted MDQ. United avers that the proposed sale is within the limitation set for this particular billing location. It is stated that the following chart illustrates the impact of United 's proposal on its daily sales of natural gas in the Entex Bogalusa, Louisiana, Billing Area.

	Actual Mcf	Additional Mcf	Total Mcf
Peak Day	8,592	180	8,772
Annual	221,310	65,700	287,010

It is stated that Entex would reimburse United for all costs resulting from the tap installation.

United further states that it would construct and operate the proposed sales tap in compliance with 18 CFR part 157, subpart F, and that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers.

Comment date: December 3, 1990, in accordance with Standard Paragraph G at the end of this notice.

Texas Eastern Transmission Corp.

[Docket No. CP91-161-000]

Natural Gas Pipeline Co. of America

[Docket No. CP91-162-000]

Natural Gas Pipeline Co. of America

[Docket No. CP91-163-000]

October 17, 1990.

Take notice that Texas Eastern Transmission Corporation, P.O. Box 2521, houston, Texas 77252-2521, and Natural Gas Pipeline Company of America, 701 East 22nd Street, Lombard, Illinois 60148, (Applicants), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP88-136-000 and Docket No. CP86-582-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: December 3, 1990, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket number (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt [1] points	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP91-161-000 (10-15-90)	Citrus Industrial Sales Company, Inc. (Marketer).	75,000 75,000 27,375,000	Various	LA, TX	6-25-90 IT-1, interruptible.	ST90-4219-000, 7-30-90.
CP91-162-000 (10-16-90)	Phillips Petroleum Company (Producer).	28,000 20,000 7,300,000	OTX	OTX	8-25-89, ITS, Interruptible.	ST90-4686-000, 8-10-90.
CP91-163-000 (10-16-90)	EP Operating Company (Producer).	30,000 15,000 5,475,000	OTX, LA	OTX, LA	5-11-89, ITS, Interruptible.	ST90-4758-000, 8-21-80.

[1] Offshore Texas is shown as OTX.

3. Colorado Interstate Gas Co.

[Docket Nos. CP91-132-000, CP91-133-000]

October 18, 1990.

Take notice that on October 12, 1990, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944 filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under CIG's blanket certificate issued in Docket No. CP86-589-000 issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the indentity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by CIG and is included in the attached appendix.

CIG also states that it would provide the service for each shipper under an executed transportation agreement, and that CIG would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: December 3, 1990, in accordance with Standard Paragraph G at the end of this notice.[2]

[2] These prior notice requests are not consolidated.

Docket number	Shipper name	Peak day[1] average annual	Points of		Start up date rate schedule	Related dockets
			Receipt	Delivery		
CP91-132-000	Coastal Gas Marketing Co.	2,500 912 912,000	KS, WY, OK	CO	8-1-90, TI-1	ST90-4384-000.
CP91-133-000	Marathon Oil Co	15,000 8,000 2,920,000	WY, CO, TX, KS, OK	CO	8-4-90, TI-1	ST91-247-000.

Quantities are shown in Mcf unless otherwise indicated.

4. Natural Gas Pipeline Co. of America

[Docket No. CP91–115–000]

October 18, 1990.

Take notice that on October 11, 1990, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP91–115–000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to partially abandon or reduce the firm transportation service performed by Natural for Chevron Chemical Company (Chevron Chemical) under Natural for Chevron Chemical Company (Chevron Chemical) under Natural's Rate Schedule X–139, as authorized in Docket No. CP85–347–000, from a daily contract demand level of 10,000 to 5,000 Mcf of natural gas, effective November 5, 1990, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that its firm transportation service for Chevron Chemical is currently effected by Chevron U.S.A., Inc. (Chevron U.S.A.), a producer, tendering natural gas it produces in West Cameron Blocks 532, 533, 534, offshore Louisiana, for Chevron Chemical's account at existing interconnections between Chevron U.S.A. and Stingray Pipeline Company (Stingray). It is stated that Natural and Trunkline Gas Company (Trunkline) then transport their proportionate share of said natural gas volumes by means of Stingray to an existing onshore interconnection between Natural and Stingray located in Cameron Parish, Louisiana. Natural indicates that it further transports the total daily demand quantity to an interconnection with United Gas Pipe Line Company (United) at the Texaco Henry Plant in Vermillion Parish, Louisiana. United further transports such gas for Chevron Chemical from the Texaco Henry Plant to points on United's Lirette-Mobile Line in St. Charles Parish, Louisiana for use by Chevron Chemical at its ammonia plant located in Luling, Louisiana, it is stated.

Natural states that pursuant to the terms of its Rate Schedule X–139, a gas transportation agreement with Chevron Chemical and Trunkline dated September 26, 1977 (Agreement), Chevron Chemical notified Natural and Trunkline by a letter dated April 25, 1990 of its election to reduce the daily demand quantity from 10,000 to 5,000 Mcf of natural gas, effective November 5, 1990, the five year anniversary date of initial deliveries of natural gas under the Agreement. Natural further states that it has filed its application as a result of Chevron Chemical's election.

Comment date: November 8, 1990, in accordance with Standard Paragraph F at the end of this notice.

5. El Paso Natural Gas Co.

[Docket No. CP91–121–000]

October 18, 1990.

Take notice that on October 11, 1990, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed an application in Docket No. CP91–121–000, under sections 7(b) and 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity under the optional certificate procedures, subpart E of part 157 of the Commission's Regulations. El Paso requests authorization for: (i) The construction and operation of additional facilities on the eastern portion of its interstate pipeline system to provide incremental capacity for new transportation service under its blanket transportation certificate, and (ii) conditional pre-granted abandonment of the facilities and related transportation services. El Paso's proposal is more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso states that in the event that the Commission is unable to issue a single order addressing both non-environmental and environmental issues, El Paso requests the issuance of a phased determination of non-environmental and environmental issues, in order that it may proceed with necessary administrative and purchasing activities to facilitate commencement of construction at the earliest possible date. In any event, El Paso requests approval of its proposal by December 31, 1990.

Specifically, El Paso states it is seeking a certificate of public convenience and necessity authorizing the construction and operation of facilities to provide 680,000 Mcf/d of incremental pipeline capacity on its East-End System to accommodate a new transportation service through El Paso's expanded interstate transmission system.

El Paso estimates that the total capital cost of the proposed expansion is $109.2 million. This includes facilities costing $107.1 million for which El Paso is specifically seeking authorization in this application and auxiliary installations costing $2.1 million which El Paso states will be constructed under § 2.55(a) of the Commission's Regulations. El Paso proposes to finance the cost of the proposed facilities through the use of internally generated funds. El Paso plans to place the proposed facilities in service by Spring, 1992, assuming shipper subscriptions are sufficient and that regulatory authorizations are in place.

El Paso claims that in order to add 680,000 Mcf/d of firm, new capacity of its East-End System, it must construct and operate approximately 120 miles of pipeline, additional compression facilities totalling 12,000 horsepower, and additional metering facilities on that system that will connect El Paso's Plains and Waha Compressor Stations. El Paso states that the new facilities will allow El Paso to move excess volumes out of the San Juan Basin to its East-End System for further transportation to eastern and midwestern United States markets. El Paso states that these facilities will also give El Paso greatly expanded system flexibility to load its northern or southern systems.

El Paso states that it does not seek specific authorization to transport gas through its proposed facilities for specific shippers. Rather, El Paso states that it intends to render firm transportation services pursuant to a new rate schedule under the provisions of its blanket transportation certificate issued in Docket No. CP88–433–000.

El Paso states its proposed new incremental firm transportation service will be offered under the provisions of proposed Rate Schedule T–5, which is to be contained in its FERC Gas Tariff, First Revised Volume No. 1–A, and will incorporate, as applicable, the general terms and conditions contained in that tariff. El Paso states that its proposed two-part firm rate which is embodied in El Paso's proposed new firm Rate Schedule T–5 is consistent with the requirements of 157.103 of the Commission's Regulations. El Paso states that the rates are cost-based and have prescribed maximum and minimum levels.

El Paso will offer a separate Transportation Service Agreement for transportation from Plains to Waha Stations in accordance with the proposed terms and provisions of Rate Schedule T–5. The proposed initial rate for the Plains to Waha service consists of a Monthly Reservation Charge with a minimum of $0.00 and a maximum of $2.1033, and a Usage Charge which has a minimum of $0.00 and a maximum of $0.0942.

El Paso states that the proposed Plains to Waha service under proposed Rate Schedule T–5 is complementary to additional proposed transportation services under proposed Rate Schedule

T–5 pending before the Commission in Docket No. CP90–2214–000. Docket No. CP90–2214–000 was filed on September 17, 1990 and a Notice of Application in that docket was issued by the Commission on September 25, 1990, and published in the **Federal Register** on October 3, 1990, (55 FR 40429).

El Paso states that new incremental firm transportation service will be available to prospective shippers based on El Paso's existing firm transportation log. El Paso proposes that in the event that the aggregate volumes of firm incremental transportation service sought by prospective shippers exceeds the incremental capacity which El Paso proposes to add to its system through this application, El Paso will give preference to those shippers, in the order they appear in the log, who provide assurance that gas will, in fact, flow under their contracts, as evidenced by the Shipper's demonstration of an existing entitlement to receive firm transportation service from the downstream pipeline or the local distribution system which will receive the shipper's gas that El Paso proposes to deliver.

El Paso further notes that on August 31, 1990, it filed an application to amend its blanket transportation certificate issued in Docket No. CP88–433–000 to allow for brokering of firm capacity on El Paso's existing and proposed incremental facilities. El Paso's proposes that this capacity brokering program will be available to shippers contracting for incremental firm capacity under the proposed Rate Schedule T–5 on such terms and conditions as are ultimately approved by the Commission.

El Paso states it will continue to provide interruptible service in accordance with existing Rate Schedule T–1 of its FERC Gas Tariff, First Revised Volume No. 1–A. El Paso states that interruptible service will be offered from time to time, based on the availability of capacity, to those shippers that have executed a transportation agreement consistent with Rate Schedule T–1, and in accordance with the Shipper's position of El Paso's interruptible transportation queue. In providing Rate Schedule T–1 service, El Paso does not propose to make any distinction between existing capacity and the additional capacity which El Paso proposes to add to its system by this application.

El Paso further states that in the event of a facility outage or other event which prevents the full use of El Paso's facilities at design capacity, the allocation of available capacity among firm customers shall be pro rata based on each such customer's confirmed quantities, not to exceed contract demand, to total confirmed quantities which are affected by the capacity constraints. In making such allocation, El Paso does not propose to make any distinction between existing capacity and the additional capacity which El Paso proposes to add to its system by this application, or between shippers receiving service under Rate Schedule T–3 and those shippers receiving service under Rate Schedule T–5.

El Paso states that it has chosen to offer its new firm transportation service on an incremental rate basis, reflecting the complete cost of the new facilities plus an allocated portion of existing costs. Consequently, El Paso says it can insure, as the optional certificate regulations require, that none of the risk of investment in the new service will fall on the existing customers. El Paso further claims that because the rates are set on an incremental basis and reflect the actual cost of the proposed service, prospective shippers can more accurately gauge their market alternatives, and El Paso will be able to obtain, prior to construction, a precise measure of shipper needs.

El Paso notes it has used the depreciation component of its presently effective rates, and a return component as detailed in its application. El Paso further notes that the proposed rates do not differentiate between seasonal peak and off-peak service. Because this is an entirely new service without any history, El Paso believes that this is the most reasonable basis upon which to devise rates.

El Paso claims that the proposed facilities are required by the present and future public convenience and necessity in order to provide El Paso with incremental capacity necessary to accommodate the anticipated increased availability of natural gas in the San Juan Basin producing area, and otherwise to permit El Paso to service increasing demands in off-system markets. El Paso states that its proposal will serve a national security interest by relieving capacity constraints which are and will continue to restrain the delivery of available domestically produced natural gas to U.S. consumers.

El Paso asserts that the need for increased pipeline capacity has arisen because of major new reserve additions, most particularly of coal seam gas, in the San Juan Basin producing area. El Paso claims that the additional facilities will permit the receipt of incremental volumes from the San Juan Basin for transportation and delivery to markets to the east of El Paso's system. El Paso further claims that such facility additions will also significantly increase the operational flexibility and reliability of El Paso's system generally, to the benefit of all of El Paso's customers including users of its existing system.

El Paso states that given the worldwide energy situation which exists, the proposed project offers substantial, assured benefits to the United States as a whole in terms of enhancing national energy security. El Paso claims that its incremental capacity expansion will facilitate the movement of large new supplies of domestic natural gas to markets throughout the United States. El Paso says it will do this by eliminating current and projected capacity constraints which otherwise will increasingly inhibit the production and delivery of gas from one of the Nation's most important producing areas, the San Juan Basin.

El Paso states that when completed, the project will permit the transportation and delivery of additional San Juan Basin volumes equivalent to approximately 138,000 barrels per day of oil, which in turn will serve to reduce the need for an equivalent amount of oil imports. El Paso further states that the additional revenues which San Juan Basin producers will realize through the marketing of these incremental volumes will also be available to finance domestic exploration and development which will further increase the Nation's energy resource base.

The Commission advises all interested parties that it intends to hold a technical conference in this application to discuss any issues requiring Commission review that are raised by the application or by any interventions in this application. Notice of such a technical conference in Docket No. CP91–121–000 will be issued at a later date.

Comment date: November 2, 1990, in accordance with Standard Paragraph F at the end of this notice.

6. Southwestern Gas Pipeline, Inc.

[Docket No. CP91–155–000]

October 18, 1990

Take notice that on October 15, 1990, Southwestern Gas Pipeline, Inc. (Southwestern), 2001 Timberloch Place, P.O. Box 4000, The Woodlands, Texas, 77380–4000, filed in Docket No. CP91–155–000 a petition under Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order requesting that the non-jurisdictional character of its intrastate gathering activities in the State of Texas will not change as a result of its entering into a proposed gathering transaction with Mitchell

Energy Corporation (Mitchell). Southwestern states that natural gas gathered by it on behalf of Mitchell will be delivered to Natural Gas Pipeline Company of America (NGPL). Southerwestern believes that the proposed transaction, which contemplates the construction of points of interconnection between the Southwestern and NGPL gathering systems, should not effect the status of Southwestern as an exempt gathering company for purposes of jurisdiction under the Natural Gas Act (NGA) and the Natural Gas Policy Act of 1978 (NGPA).

Southwestern states that it is a wholly-owned tiered subsidiary of Mitchell Energy and Development Corporation, of which Mitchell is also a subsidiary.

Southwestern states that it owns and operates approximately 2,100 miles of small diameter, low pressure gathering lines an appurtenant facilities in North Texas, principally in Wise, Jack, Palo Pinto and Parker Counties. According to Southwestern, approximately 85 percent of its system consists of 1-inch to 6-inch diameter lines. Southwestern states that it operates one 31-mile segment of 12-inch diameter line between Palo Pinto and Parker Counties, Texas. Southwestern submits that its system is arranged in a cob-like configuration which enables it to gather gas from approximately 2,000 wells connected to the system and to deliver the gas to several small processing plants. It is further states that these plants are owned and operated by Liquid Energy corporation (LEC), an affiliate of Southwestern. For the most part, Southwestern states that gas that is processed at each plant is then delivered to one of three non-affiliated intrastate pipelines, Valero Intrastate Pipeline Company, Lone Star Gas Company and TUFCO, Inc.

According to Southwestern, throughput on the system was recently measured at 90.094 Mcf per day (Mcfd) or an average production per well of less than 46 Mcfd. Southwestern operates 98 individual small compressors which range in size from 18 horsepower (hp) to 880 hp with the overwhelming majority operating at 90 hp or less. Southwestern gathers gas from the wells of more than 400 producers on behalf of a variety of customers. In addition, Southwest states that it sells approximately five percent of its daily throughput principally to a small municipal distribution system, Brazos Gas Company. Southwestern further states that its remaining sales of extremely small amounts are to Gaylyn, Inc. (17 Mcfd), House of Webster (20 Mcfd) and Texaco, Inc. (4 Mcfd). Southwestern avers that it is subject to the jurisdiction of the Texas Railroad Commission which governs, among other things, its limited sales activities.

Southwestern submits that it has been offered a proposal by Mitchell to gather gas on behalf of Mitchell for delivery to NGPL. Specifically, Southwestern states that the proposal would assist Mitchell in satisfying its obligations to NGPL under their natural gas agreement that became effective April 1, 1990 (1990 Agreement). It is stated that the 1990 Agreement covers the sale by Mitchell and the purchase by NGPL of natural gas to be produced in the North Texas area. NGPL also owns and operates a large gathering system in Wise County.

Southwestern states that NGPL's gathering system is in close proximity to the Southwestern system in Wise County, and that incident to the 1990 Agreement, Mitchell will be able to sell gas to NGPL that it produced from wells which are at locations not immediately adjacent to NGPL's gathering system in the area. It is averred that Mitchell has leased blocks of acreage that are near Southwestern's gathering system with the goal in mind of utilizing the production from wells on those leases and potential interconnections with Southwestern's gathering system as supply sources for the 1990 Agreement.

In its gathering proposal to Southwestern, it is stated that Mitchell expressed its desire to avoid unnecessary duplication of facilities and related investments. According to Southwestern, Mitchell proposed that Southwestern gather gas from various wellhead locations on behalf of Mitchell, move the gas through Southwestern's gathering system and redeliver the gas either directly or by displacement to a point or points of interconnection (to be established) between the gathering systems of Southwestern and NGPL in the Wise County area upstream of the NGPL transmission facilities. In addition, Southwestern submits that a portion of the gas it proposes to gather for Mitchell may be redelivered to Mitchell immediately upstream of LEC's Bridgeport, Texas gas processing facility.

Southwestern states that in recent years, the Commission has adopted a clear preference for applying the primary function test set forth in Farmland Industries, Inc., 23 FERC ¶ 61,063 (1983), to a particular factual situation in order to determine whether particular facilities or services qualify for exemption under section 1(b) of the NGA.

Southwestern states that factors that have been considered by the Commission in applying the primary function test include: (1) The diameter and length of the pipeline; (2) the location of compressors and processing plants; (3) the extension of the facility beyond the central point in the field; (4) the location of wells along all or part of the facility; and (5) the geographical configuration of the system. Southwestern believes that application of the primary function test to its current and proposed facilities clearly demonstrates that they should continue to be classified as gathering.

As to the diameter and length of the pipeline, Southwestern states that its system ranges in size from 1¼-inch to 12-inches, with only approximately 15 percent exceeding 6-inches in diameter. Southwestern believes that this is fully consistent with a typical gathering facility.

As to the location of compressors and processing plants, Southwestern notes that it provides no processing services. With respect to the relatively small processing plants of LEC sprinkled throughout the system, Southwestern states that it is immediately downstream of these plants where gas gathered by it is delivered to third parties. In this regard, it is noted that the Mineral Wells Plant is the point of sale to Brazos River Company. As for the proposed interconnections with NGPL, Southwestern states that it will not provide any processing services. In addition, Southwestern avers that 74 percent of its system is operated at pressures less than 20 percent of the specified minimum yield strength, which indicates that the gathering system is operated at a reasonably low pressure, unlike typical pipeline transmission pressures. Southwestern also states that compression horsepower provided by the 98 units on its system averages only 140.2 hp per unit. This, Southwestern believes is also indicative of a gathering facility.

Southwest states that the central point in the field test is probably not applicable to its gathering system since it provides no processing services. Nevertheless, Southwestern states that the configuration of its system and the scattered small processing plants is unlike a typical transmission line, and the proposed transaction with Mitchell will not alter this.

As to the location of wells along all or part of the facility, Southwestern states that the scattered nature of approximately 2000 wells connected to Southwestern's system attests to the gathering function of these facilities.

Southwestern states that the geographical configuration of the system is typical of the network-like pattern of many gathering facilities, and the proposed transaction with Mitchell will in no way alter this configuration.

After considering all the relevant facts and circumstances under the primary function test, Southwestern states that it becomes apparent that the primary function of its system is and will remain gathering gas. Under the proposed transaction with Mitchell, Southwestern states that it will simply gather gas for ultimate delivery to an interstates pipeline. With the exception of the fact that the proposed transaction involves gas that will flow in interstate commerce, Southwestern states that it is no different in character from the currently existing gathering activities it performs for more than 400 producers whose wells are attached to its gathering system.

Southwestern further states that in 1983, the Commission authorized it to perform service under section 311(a)(2) of the NGPA, 24 FERC ¶61,379. According to Southwestern, the discrete activities associated with that order, which involved the delivery of gas on behalf of natural, have long since concluded. Southwestern states that these activities were entered into at a time when the Commission regulations involving section 311 were still evolving and when Southwestern, like many intrastate companies, was unclear of the implications of the provision of the NGPA on its gathering operations and the specific arrangements that were in place in 1983. In view of this, Southwestern submits that the Commission's finding in that order that Southwestern is an intrastate pipeline within the meaning of section 2(16) of the NGPA is simply inapplicable to the situation at hand. It is stated that the transactions that were the subject to the prior Commission order have terminated.

Comment date: November 8, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Texas Gas Transmission Corp.

[Docket Nos. CP91-152-000 [3] and CP91-153-000]

October 18, 1990.

Take notice that on October 15, 1990, Texas Gas Transmission Corporation (Applicant), filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicant and is included in the attached appendix.

The Applicant also states that it would provide the service for each shipper under an executed transportation agreement, and that the Applicant would charge rates and abide by the terms and conditions of the referenced transportation rate schedule(s).

Comment date: December 3, 1990, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (Date filed)	Applicant	Shipper Name	Peak day,[1] avg, annual	Points of		Start up date rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-152-000 (10-15-90)	Texas Gas Transmission Corporation 3800 Frederica St., Owensboro, KY 42301.	Access Energy Corporation.	30,000 20,000 12,000,000	LA, IN, KY, TX, Off LA, TN, Off TX, IL, AR, OH.	OH, KY	9-6-90 IT	CP88-686-000, ST90-4734-000.
CP91-153-000 (10-15-90)	Texas Gas Transmission Corporation 3800 Frederica St., Owensboro, KY 42301.	Graham Energy Marketing Corp.	5,000 5,000 1,825,000	Off LA	Off LA	9-2-90 IT	CP88-686-000, ST90-4711-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

8. Northern Natural Gas Co., Division of Enron Corp.

[Docket Nos. CP91-126-000, CP91-127-000, and CP91-140-000]

October 18, 1990.

Take notice that Northern Natural Gas Company, Division of Enron Corp., 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, (Applicant), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: December 3, 1990, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-126-000 (10-12-90)	Phillips Petroleum Company (Producer).	100,000 75,000 36,500,000	Various	Various	9-1-90, IT-1, Interruptible.	ST90-4722, 9-1-90.
CP91-127-000 (10-12-90)	Phillips Gas Marketing Company (Marketer).	100,000 75,000 36,500,000	Various	Various	9-1-90, IT-1, Interruptible.	ST90-4716, 9-1-90.
CP91-140-000 (10-12-90)	Phillips 66 Natural Gas Company (Market).	200,000 150,000 73,000,000	Various	Various	9-1-90, IT-1, Interruptible.	ST90-4720, 9-1-90.

9. Columbia Gulf Transmission Co.

[Docket Nos. CP91-142-000, CP91-143-000, and CP91-144-000]

October 18, 1990.

Take notice that Applicant filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: December 3, 1990, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day,[1] avg, annual	Points of		Start up date, rate schedule	Related dockets [2]
			Receipt	Delivery		
CP91-142-000 (10-12-90)	Centran Corporation	100,000 30,000 10,950,000	KY, LA, Offshore LA.	MI, TN, KY, LA, Offshore LA.	09-01-90, ITS-1 & ITS-2.	ST90-4861-000.
CP91-142-000 (10-12-90)	Tenngasco Corporation	55,000 20,000 7,300,000	LA, Offshore LA.	LA	09-01-90, ITS-1 & ITS-2.	ST90-4864-000.
CP91-144-000 (10-12-90)	NGC Transportation Inc.	200,000 100,000 36,500,000	LA, Offshore LA.	LA, TN, TX, MI	09-01-90, ITS-1 & ITS-2.	ST90-4863-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation service was reported in it.

10. High Island Offshore System

[Docket Nos. CP91-89-000, CP91-90-000, CP91-91-000, CP91-92-000, and CP91-93-000]

October 18, 1990.

Take notice that on October 9, 1990, High Island Offshore System, 500 Renaissance Center, Detroit, Michigan 48243 filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket Nos. RM88-14-001 and RM88-15-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[6]

A summary of each transportation service which includes the shippers identity, the peak day, average day and annual volumes, the receipt point(s), the delivery point(s), the applicable rate schedule, and the docket number and service commencement date of the 120-day automatic authorization under §§ 284.223 of the Commission's Regulations is provided in the attached appendix.

Comment date: December 3, 1990, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day [1], avg, annual	Points of		Start up date, rate schedule	Related dockets [2]
				Receipt	Delivery		
CP91-89-000 (10-9-90)	High Island Offshore System.	Meth Corporation.	137,500 137,500 50,187,500	Offshore TX&LA	Offshore TX&LA	8-10-90, IT	RM88-14-001, RM88-15-000, ST90-4359-000
CP91-90-000 (10-9-90)	High Island Offshore System.	Access Energy Corporation.	290,000 290,000 105,850,000	Offshore TX&LA	Offshore TX&LA	8-15-90, IT	RM88-14-001, RM88-15-000, ST90-4356-000.
CP91-91-000 (10-9-90)	High Island Offshore System.	Energy Marketing Exchange, Inc.	200,000 200,000 73,000,000	Offshore TX&LA	Offshore TX&LA	8-11-90, IT	RM88-14-001, RM88-15-000, ST90-4363-000.

Docket No. (date filed)	Applicant	Shipper name	Peak day [1], avg, annual	Points of		Start up date, rate schedule	Related dockets [2]
				Receipt	Delivery		
CP91-92-000 (10-9-90)	High Island Offshore System.	Houston Gas Exchange Corporation.	580,000 580,000 211,700,000	Offshore TX&LA	Offshore TX&LA	8-10-90, IT	RM88-14-001, RM88-15-000, ST90-4358-000.
CP91-93-000 (10-9-90)	High Island Offshore System.	Koch Hydrocarbon Company.	620,000 620,000 226,300,000	Offshore TX&LA	Offshore TX&LA	8-9-90, IT	RM88-14-001, RM88-15-000, ST90-4364-000.

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] The RM dockets corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

11. U-T Offshore System

[Docket Nos. CP91-137-000, 91-138-000, and 91-139-000]

October 18, 1990.

Take notice that on October 12, 1990, U-T Offshore System (Applicant), P.O. Box 1396, Houston, Texas 77251, filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. RP89-99-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[7]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under section 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: December 3, 1990, in accordance with Standard Paragraph G at the end of the notice.

[7] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day,[1] average day, annual	Receipt points [2]	Delivery points	Start up date, rate schedule, service type	Related [3] docket, contract date
CP91-137-000 (10-12-90)	Philadelphia Electric Company	200,000 200,000 73,000,000	OLA	LA	8-16-90, IT, Interruptible.	ST90-4807-000, 7-01-90.
CP91-138-000 (10-12-90)	Graham Energy Marketing Corp.	75,000 75,000 27,375,000	OLA	LA	8-18-90, IT, Interruptible.	ST90-4806-000, 7-01-90.
CP91-139-000 (10-12-90)	Delmarva Power & Light Company.	100,000 100,000 12,000,000	OLA	LA	8-18-90, IT, Interruptible.	ST90-4733-000, 7-01-90.

[1] Quantities are shown in Mcf.
[2] Offshore Louisiana is shown as OLA.
[3] If an ST docket is shown, 120-day transportation service was reported in it.

12. Tennessee Gas Pipeline Co. and Trunkline Gas Co.

[Docket Nos. CP91-145-000, CP91-146-000, CP91-147-000, CP91-148-000, CP91-149-000, and CP91-150-000]

October 18, 1990.

Take notice that Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252, and Trunkline Gas Company, P.O. Box 1642, Houston, Texas 77251-1642, (Applicants), filed with the Commission in the above-referenced dockets prior notice requests pursuant to §§ 57.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP87-115-000 and Docket No. CP86-586-000, respectively, pursuant to section 7 of the NGA, all as more fully set forth in the requests are open to public inspection.[8]

Information applicable to each transaction, including the shipper's identity; the type of transportation service; the appropriate transportation rate schedule; the peak day, average day and annual volumes; the service initiation dates; and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: December 3, 1990, in accordance with Standard Paragraph G at the end of this notice.

[8] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, Average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related ST docket, start up date
CP91-145-000 (10-12-90)	OXY USA, inc. (Producer)	100,000 100,000 36,500,000 [2]	LA, OLA, MS, TX.	LA, TX	8-31-90, IT, Interruptible.	ST90-246, 9-15-90
CP91-146-000 (10-12-90)	Amoco Production Company (Producer).	50,000 25,000 9,125,000	IL, LA, OLA, TN, TX, OTX.	LA	5-7-90, PT, Interruptible.	ST90-5303, 9-5-90
CP91-147-000 (10-12-90)	Panhandle Trading Company (Marketer).	100,000 100,000 36,500,000	LA, OLA	LA	5-22-90, PT, Interruptible.	ST90-5300, 9-6-90
CP91-148-000 (10-12-90)	Amerada Hess Corporation (Producer).	75,000 25,000 9,125,000	IL, LA, OLA, TN, TX, OTX.	LA	6-6-90, PT, Interruptible.	ST90-5346, 9-1-90
CP91-149-000 (10-12-90)	B.P. Gas, Inc. (Marketer)	50,000 30,000 10,050,000	IL, LA, OLA, TN, TX, OTX.	IL	4-4-90, PT, Interruptible.	ST90-5302, 9-1-90
CP91-150-000 (10-12-90)	Tenngasco Corporation (Marketer).	100,000 100,000 36,500,000	IL, LA, OLA, TN, TX, OTX.	LA	8-17-90, PT, Interruptible.	ST90-5301, 9-1-90

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Tennessee Gas Pipeline Company lists its volumes in dekatherms.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest if filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-25319 Filed 10-25-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT90-8-002]

Mississippi River Transmission Corp., et al., Natural Gas Pipeline Filings

October 18, 1990.

Take notice that the following filings have been made with the Commission:

1. Mississippi River Transmission Corporation

[Docket No. MT90-8-002]

Take notice that on October 12, 1990, U-T Offshore System (UTOS), tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497-A and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Second Revised Volume No. 1, to be effective November 17, 1990.

First Revised Sheet No. 2
First Revised Sheet No. 3
First Revised Sheet No. 48
First Revised Sheet No. 49
First Revised Sheet No. 50
First Revised Sheet No. 51
First Revised Sheet No. 52
First Revised Sheet No. 73
First Revised Sheet No. 74
First Revised Sheet No. 75
First Revised Sheet No. 76

Comment date: November 1, 1990, in accordance with Standard Paragraph K at the end of this notice.

2. U-T Offshore System

[Docket Nos. MT91-1-000, and MG91-1-000]

Take notice that on October 12, 1990, U-T Offshore System (UTOS), tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497-A and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Second Revised Volume No. 1, to be effective November 17, 1990.

First Revised Sheet No. 2
First Revised Sheet No. 3
First Revised Sheet No. 48
First Revised Sheet No. 49
First Revised Sheet No. 50
First Revised Sheet No. 51
First Revised Sheet No. 52
First Revised Sheet No. 73
First Revised Sheet No. 74
First Revised Sheet No. 75
First Revised Sheet No. 76

Comment date: November 1, in accordance with Standard Paragraph K at the end of this notice.

Standard Paragraphs

K. Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-25363 Filed 10-25-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $77,500, plus accrued interest, obtained by the DOE under the terms of a Remedial Order issued to Gasoline Marketers of America (GMA), and $45,534, plus accrued interest, obtained by the DOE under the terms of a Consent Order entered into by the DOE and Mr. Hadley Paul, owner of Paul Investments, Inc. (Paul). The funds will be available to customers who purchased motor gasoline from GMA during the audit period March 1, 1979 through August 30, 1979, and to customers who purchased motor gasoline from Paul during the audit period March 1, 1979 through December 31, 1979.

DATES AND ADDRESSES: Applications for Refund must be received on or before January 24, 1991, and should be addressed to: Gasoline Marketers of America or Paul Investments, Inc., Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

All Applications for Refund should be filed in duplicate and display a prominent reference to Case No. KEF-0138 (GMA) or LEF-0006 (Paul).

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the procedures that the DOE has formulated to distribute funds obtained from GMA and Paul. The funds are being held in interest-bearing escrow accounts pending distribution by the DOE. The funds were provided pursuant to a Remedial Order issued to GMA and to a Consent Order entered into by Paul and the DOE. Customers of GMA or Paul who purchased motor gasoline during the audit periods set forth at the beginning of this notice may file claims for refunds.

A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the GMA/Paul settlement funds was issued on May 1, 1990. 55 FR 18944 (May 7, 1990).

As the Decision and Order published with this Notice indicates, Applications for Refunds may now be filed by customers who purchased motor gasoline from GMA and/or Paul during their respective audit periods. Applications will be accepted provided they are received no later than 90 days after publication of this Decision and Order in the **Federal Register.** The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: October 22, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of firms: Gasoline Marketers of America, Paul Investments, Inc.

Dates of filing: July 13, 1989, December 21, 1989.

Case numbers: KEF-0138, LEF-0006.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR part 205, subpart V, the Economic Regulatory Administration (ERA) of the DOE filed petitions for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on July 13, 1989 and December 21, 1989. In those petitions, the ERA requests that the OHA formulate and implement procedures for the distribution of funds receved from Gasoline Marketers of America (GMA) and Mr. Hadley Paul, former president of Paul Investments, Inc. (Paul).

This Decision and Order establishes procedures for distributing these funds to qualified refund applicants.

I. Background

Each of these firms was a "reseller-retailer" of motor gasoline as that term was defined in 10 CFR 212.31. GMA is located in Chatham, New Jersey, and Paul is located in San Antonio, Texas. An ERA audit of each firm's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR part 212, subpart F.

The ERA audit of GMA alleged that during the audit period March 1, 1979 through August 30, 1979 the firm committed possible pricing violations amounting to $841,395.66 with respect to its sales of motor gasoline to 33 retailers, 13 wholesale-resellers and one bulk-purchaser.[1] In order to obtain restitution for these alleged overcharges, the ERA issued a Proposed Remedial Order (PRO) to GMA on August 13, 1982. On September 30, 1983, the DOE issued the PRO as a final Remedial Order. *Gasoline Marketers of America,* 11 DOE ¶ 83,013 (1983). On January 26, 1989, the United States Bankruptcy Court for the District of New Jersey, which had jurisdiction over a bankruptcy petition previously filed by GMA, approved an agreement between GMA and DOE under which the DOE's claim was limited to $77,500 in full settlement of the remedial order proceeding. This amount was received by the DOE on June 14, 1989, and deposited into an interest bearing escrow account for ultimate distribution by the DOE.

The ERA audit of Paul revealed possible pricing violations amounting to $480,364.41 with respect to Paul's sales of regular and unleaded motor gasoline to nine retailers and four resellers during the audit period March 1, 1979 through December 31, 1979. In order to settle all claims and disputes between Paul and the DOE regarding the firm's sales of motor gasoline during the audit period, Paul and the DOE entered into a Consent Order on February 13, 1985 which directed Paul to remit $50,000 to the DOE.[2] As a result of Paul's financial

[1] In arriving at this total overcharge amount in its audit workpapers, the ERA made a mathematical error of $1.55. The correct sum of the individual overcharge amounts is $841,394.11.

[2] The Consent Order resolved all issues involved in a PRO that the ERA had issued to Paul on September 21, 1982. See March 4, 1985 Dismissal Letter from Thomas L. Wieker, Deputy Director, OHA, to the attorneys for Pual and ERA (Case No. HRO-0096).

difficulties, the settlement amount was subsequently limited to ERA to $45,534, which was paid in full as of November 13, 1989.

On May 1, 1990, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the GMA and Paul escrow fund accounts. In order to give notice to all potentially affected parties, a copy of the PD&O was published in the **Federal Register** and comments were solicited. 55 FR 18945 (May 7, 1990). No comments were received. In this Decision and Order, we will adopt final refund procedures for the distribution of the funds in the GMA and Paul escrow accounts.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR part 205, subpart V. The DOE policy is to use the subpart V process to distribute such funds. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

As we stated in the PD&O, we have reviewed the record in these cases and have determined that a subpart V proceeding is an appropriate mechanism for distributing the GMA and Paul escrow funds. We will therefore grant the ERA's petition and assume jurisdiction over these funds.

III. Final Refund Procedures

A. Eligible Claimants

In the first stage, refund monies will be distributed to those parties which were directly injured in transactions with GMA/Paul. As discussed in the Proposed Decision, we believe the potential refund claimants in this proceeding are those included on the list of identified customers which was attached to the PRO issued to GMA and to the Consent Order entered into by Paul. These potential refund claimants are listed in Appendices A and B to this Decision.

1. *Showing of injury.* As we noted in the PD&O, refund claimants who resold GMA or Paul motor gasoline (all of the identified customers except one) and who do not accept the small claims presumption described below, will be required to demonstrate that they were injured by GMA/Paul's alleged overcharges.[3] To make this showing, a reseller applicant (including retailers and refiners) will generally be required to show that at the time it purchased motor gasoline from GMA or Paul, market conditions would not permit it to increase its prices to pass through to its customers the additional cost associated with the overcharges. See *Gulf Oil Corp./Thermages, Inc.*, 18 DOE ¶ 85,885 (1989); *Plaquemines Oil Sales Corp.*, 17 DOE ¶ 85,059 (1988) (*Plaquemines*). This showing may be made in a competitive disadvantage analysis, which compares the price paid by the applicant for motor gasoline purchased from the settlement firm with the average market price for that product. In order to demonstrate that it did not subsequently recover the increased costs associated with the alleged overcharges by raising its prices, a reseller must also show, through credible, firm-specific data, that it had a bank of unrecovered increased costs beginning in the first month of the period for which a refund is claimed through the date when the "banking" regulations were terminated.[4]

We realize that some applicants may be unable to provide actual, contemporaneous cost bank records. We therefore are willing to accept reasonable approximations of cost banks calculated in a manner consistent with the price regulations. See *Plaquemines; see also Plaquemines/Delta Marina*, 17 DOE ¶ 85,415 (1988). The maintenance of a bank does not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982).

2. *Small claims presumption.* We shall adopt, as proposed in the PD&O, a small claims presumption of injury which has been used in many previous special refund proceedings. We recognize that making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of motor gasoline from GMA or Paul. For example, such firms may have limited accounting and data-retrieval capabilities and therefore may be unable to produce the records necessary to prove that they did not pass the alleged overcharges through to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. See, *e.g.*, *Marion*. Therefore, any reseller whose "allocable share" (as defined in part III B, *infra*.) is $5,000 or less need only document its purchase volumes rather than make a detailed showing of injury in order to be eligible to receive a refund.[5]

3. *Spot-purchaser.* We shall also adopt a rebuttable presumption that resellers which made only spot purchases of GMA or Paul motor gasoline have suffered no injury. Spot purchasers tend to have considerable discretion in where and when to make purchases and therefore would not have made spot purchases of GMA or Paul products at increased prices unless they were able to pass through the full amount of the overcharges to their own customers. See *Vickers*, 8 DOE at 85,396–97. Accordingly, any reseller claimant who was a spot purchaser must submit evidence to rebut the spot purchaser presumption and establish the extent to which it was injured by the spot purchase(s).

B. Allocation of Consent Order Funds.

In most subpart V proceedings, we have distributed consent order funds to successful claimants based upon a volumetric approach which allocates a portion of the consent order fund to each gallon of product which the applicant purchased from the consent order firm. However, in certain proceedings, we have utilized the material gathered in the ERA audit to allocate the consent order funds in a way which makes the refunds correspond more closely to the alleged overcharges that were experienced. See, *e.g.*, *Plaquemines*. Those proceedings involved an audit which was relatively narrow in scope, a consent order or other type of settlement agreement which was limited to the same products and time period as the audit, and a relatively small number of customers, all or most of whom were identified in the enforcement proceeding or settlement documents.

[3] In the GMA proceeding, threre appears to be one potential claimant who is an end-user (Energy Engineering Inc.). We will adopt a presumption of injury for end-users. They will therefore not be required to make a demonstration of injury beyond submitting purchase volume information. See, *e.g.*, *Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*); *Thornton Oil Corp.*, 12 DOE ¶ 85,014 (1984).

[4] Retailers and most resellers were permitted to utilize cost banks for motor gasoline pricing purposes only until July 15, 1979 and April 30, 1980, resepctively. 42 FR 42542 (July 19, 1979); 45 FR 29546 (May 2, 1980). Therefore, retailer and reseller applicants will not be required to submit cost bank data subsequent to those dates.

[5] As in prior special refund proceedings, in determining the "allocable share" of an applicant, we intend to combine the claims of all affiliated entities. See *Exxon Corp./Tate Oil Co.*, 18 DOE ¶ 85,460 (1989); see *also Marathon Oil Co./Swiftly Oil Co.*, 15 DOE ¶ 85,347 (1987). A reseller applicant whose allocable share is in excess of $5,000 may choose to limit its claim to $5,000 in lieu of makng a detailed showing of injury.

Because these factors are present in these two proceedings, we shall use this approach to allocate the GMA and Paul settlement funds. We recognize that the audit files and other relevant enforcement and settlement documents do not provide conclusive evidence as to the identity of the refund recipients or the amount of money that they should receive. Nevertheless, these documents can be used for guidance in fashioning a refund allocation plan that is more equitable than a plan based on the volumetric approach. Therefore, we shall, as proposed, use the distribution of the alleged overcharges set forth in the attachments to the GMA PRO and the Paul Consent Order to allocate the settlement funds. (These figures are set forth in appendices A and B, respectively.) As indicated above, the escrow funds resulted from negotiated settlements and are substantially less than the total overcharge amounts in the GMA Remedial Order and Paul PRO. Accordingly, as proposed in the PD&O, each purchaser's maximum potential refund, or allocable share of the settlement fund, will be a prorated amount of the alleged overcharges experienced by that firm. In the case of GMA's customers, the allocable shares listed in appendix A are equivalent to approximately 9.2 percent of the alleged overcharge amounts ($77,500 settlement amount divided by the $841,394.11 alleged overcharge amount). The allocable shares of Paul's customers, as listed in appendix B, are equivalent to 9.47 percent of the alleged overcharge amounts ($45,534 settlement amount divided by $480,364.41 alleged overcharge amount). In addition, a successful claimant will receive a pro rata share of the interest that has accrued in the GMA and Paul escrow accounts.

In the event that money remains after all refund claims from this proceeding have been analyzed, those funds will be disbursed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C.A. 4501–4507.

C. General Refund Application Requirements

Pursuant to 10 CFR 205.283, we will now accept Applications for Refund from individuals and firms identified in appendix A or B of this Decision and Order. There is no specific application form that must be used. All Applications for Refund should include the following information:

(1) A conspicuous reference to Case Number KEF–0138 (GMA) or LEF–0006 (Paul) and the name and address of the applicant during the period for which the claim is filed, as well as the name to whom the refund check should be made out and the address to which the check should be sent;

(2) The name, title, address and telephone number of a person who may be contacted by OHA for additional information concerning the Application;

(3) The manner in which the applicant used the GMA or Paul motor gasoline i.e., whether it was a reseller, retailer, end-user, etc.;

(4) A monthly schedule of the number of gallons that the applicant purchased from GMA or Paul during the refund period. If a claimant was an indirect purchaser of GMA or Paul gasoline, it must also submit the name of its immediate supplier and indicate why it believes the products were originally sold by GMA or Paul;

(5) If the applicant is a reseller requesting a refund in excess of $5,000, it must submit all relevant material necessary to support its claim in accordance with the injury requirements outlined above;

(6) If the applicant was or is in any way affiliated with GMA or Paul, an explanation of the nature of that affiliation;

(7) A statement as to whether there was a change in ownership of the applicant's firm during or since the refund period. If there was such a change in ownership, the applicant must submit a detailed explanation as well as provide the names and addresses of the previous or subsequent owners;

(8) A statement as to whether the claimant is or has been involved in any DOE enforcement proceedings or private actions filed under section 210 of the Economic Stabilization Act. If these actions have been concluded, the applicant should furnish a copy of the final order issued in the matter. If the action is still in progress, the applicant should briefly describe the actions and its current status. The applicant must inform OHA of any change in status while its Application for Refund is pending. See 10 CFR 205.9(d);

(9) A statement as to whether the applicant or a related firm has filed any other Application for Refund in this proceeding;

(10) A statement as to whether the claimant or a related firm has authorized any other individual(s) to file an Application for Refund on the claimant's behalf in this proceeding; and

(11) The following statement signed by the applicant or a responsible official of the business or organization claiming the refund: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the Federal Government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001."

Applications for Refund should be sent to: Gasoline Marketers of America or Paul Investments, Inc. Special Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

All applications must be filed in duplicate and postmarked within 90 days from the date of publication of this Decision in the **Federal Register**. A copy of each Application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any claimant that believes that its Application for Refund contains confidential information must submit two additional copies of the application in which the confidential information is deleted, together with a statement specifying why the information is confidential.

It is therefore ordered that:

(1) Applications for Refund from the funds remitted to the Department of Energy by the Gasoline Marketers of America pursuant to the agreement finalized on January 26, 1989, may now be filed.

(2) Applications for Refund from the funds remitted to the Department of Energy by Paul Investments, Inc., pursuant to the Consent Order finalized on February 13, 1985, may now be filed.

(3) All Applications for Refund must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: October 22, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX A.—SCHEDULE OF POTENTIAL REFUNDS (GMA CUSTOMERS)

Customer name	Alleged overcharge amount	Allocable share
Retailers:		
S&L Gas	$25,963.13	$2,391
Public Auto Service a/k/a Persuad's Auto Svc	8,885.76	818
Balonze Service Station	17,136.03	1,578
Philipsburg Chevron	28,983.76	2,670
Steve Cornfield a/k/a Westwood Public	5,645.35	520
M&F Auto	21,672.08	1,996
Rockaway Public a/k/a H&L Auto Repair	7,681.98	708
J. Schmidt #132 a/k/a Ridgedale Public a/k/a Accurate Auto	29,594.28	2,726
Forrest Ave. 66 Corp	3,033.95	279
5'Gs Gorp	3,338.32	308
West Orange Public a/k/a Frank & Sal Corvino	6,163.78	568
Alfred Fichter a/k/a Nikki Sales Ltd., Inc	16,630.56	1,532
Luis Clave a/k/a Condoritos Auto	2,181.92	201
Summit Public	16,350.55	1,506
Pete Scavone a/k/a Pete's Service Station	18,454.97	1,700
James Refee a/k/a East Orange Public	4,771.66	440
James Doolan #147	14,926.40	1,375
Sigmor, Inc. a/k/a Autotronics	28,916.87	2,664
Jefferson Service	511.11	47
George Mattesini	196.92	18
Remote Services	3,628.11	334
Ike's Car Wash #016	303.78	28

APPENDIX A.—SCHEDULE OF POTENTIAL REFUNDS (GMA CUSTOMERS)—Continued

Customer name	Alleged overcharge amount	Allocable share
Walter Tavadowski	273.78	25
Harry's Disc. Gas & Tire	4,344.35	400
Radolph Town & Country #115	26,914.49	2,479
Conwell Heights, PA. a/k/a Town & Country, PA	1,250.76	115
Bill's Town & Country	27,268.19	2,512
Town & Country Marketing	21,384.83	1,970
Ledgewood Town & Country #102	52,948.88	4,877
Livingston Town & Country #119	56,125.91	5,170
Parlin Town & Country #134	22,370.59	2,061
Rockaway Town & Country #110	8,738.73	805
Tom's River Town & Country	1,091.75	101
Wholesalers:		
Cibro Gasoline Corp	222,364.98	20,482
White Meadow Petroleum	2,990.35	275
Cedar Hill Oil	1,383.47	127
MacArthur Petroleum	460.70	42
Queen City Fuel	700.05	65
TEFCO	1,097.14	101
Rappaport Oil Co	2,607.21	240
General Oil Dist	15,353.89	1,414
Good Hope Refineries	34,741.04	3,200
Wykoff Oil Co	3,346.89	308
Affusco's Plumb. & Oil	581.23	54
M. Spiegel & Son Oil Corp	1,492.53	137
Bolkema Fuel Co	3,065.64	282
Wholesale Bulk:		
Energy Engineering Inc	63,525.46	5,851
Totals	841,394.11	77,500

APPENDIX B.—SCHEDULE OF POTENTIAL REFUNDS (PAUL CUSTOMERS)

Customer name	Alleged overcharge amount	allocable share
Alkek Oil Co	$7,639.18	$724
Ameroil	10,617.24	1,006
Enmark	10,818.71	1,025
Independent Enterprises	1,631.28	155
Harry Tappan	19,838.00	1,881
Herman Miller	24,583.83	2,330
Hillman Oil Co	1,550.11	147
National Convenience Stores	41,704.82	3,953
Neal Fina	367.61	35
Senco	230,383.24	21,838
Sigmor	49,081.33	4,653
Southland, Inc	48,296.84	4,578
Tolson Oil Co	33,852.22	3,209
Totals	480,364.41	45,534

[FR Doc. 90-25418 Filed 10-25-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3855-4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements Filed October 15, 1990 Through October 19, 1990 Pursuant to 40 CFR 1506.9.

EIS No. 900387, FINAL EIS, MMS, HI, Hawaiian Archipelago and Johnston Island Exclusive Economic Zones, Marine Mineral Sale (Non-Oil and Gas Minerals), Leasing, Possible 404 Permit, Hawaii and Pacific, Due: November 26, 1990, Contact: Robert G. Paul, (213) 894-2233.

EIS No. 900388, DRAFT, EIS, SFW, WY, Cokeville Meadows National Wildlife Refuge, Management Plan, Land Acquisition, Implementation, Bear River Valley, Lincoln County, WY, Due: December 19, 1990, Contact: David E. Jones, (303) 236-8148.

EIS No. 900389, DRAFT EIS, BLM, NV, Clark County Regional Flood Control Master Plan, Facilities Construction and Operation, Implementation, Section 404 Permit, Clark County, NV, Due: December 14, 1990, Contact: Donn Siebert, (702) 647-5000.

EIS No. 900390, DRAFT EIS, AFS, CA, Castle Rock Compartment Timber Sales and Road Construction, Implementation, Six Rivers National Forest, Lower Trinity Ranger District, Trinity County, CA, Due: December 21, 1990, Contact: Lawrence L. Cabodi, (916) 629-2118.

EIS No. 900391, FINAL EIS, FHW, UT, UT-91 Highway Improvement, Brigham City to Wellsville, Funding and Section 404 Permit, Box Elder and Cache Counties, UT, Due: December 10, 1990, Contact: Thomas S. Allen, (801) 524-5141.

EIS No. 900392, DRAFT EIS, BLM, WY, Nebraska Resource Management Plan, Implementation, Newcastle Resource Area, Casper District, Several Counties, WY, Due: Janaury 23, 1991, Contact: Floyd Ewing, (307) 746-4453.

EIS No. 900393, FINAL EIS, UAF, IL, Fort Sheridan Base Closure Headquarters 4th US Army Relocation to Fort Benjamin Harrison, IN and Fort McCoy, WI, Implementation, Lake County, IL, Due: November 26, 1990, Contact: William R. Haynes, (502) 582-5696.

Amended Notices

EIS No. 900327, DRAFT EIS, AFS, NM, Creek Diversity Unit Timber Sales and Road Construction, Implementation, Santa Fe National Forest, Pecos Ranger District, San Miguel County, NM, Due: December 6, 1990, Contact: Larry Roybal, (505) 757-6121.

Published FR 9-7-90—Review period extended.

Dated: October 23, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90-25403 Filed 10-25-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3855-5]

Environmental Impact Statements and Regulations, Availability of EPA Comments

Availability of EPA comments prepared October 08, 1990 Through October 12, 1990 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 101(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 13, 1990 (55 FR 13949).

Draft EISs

ERP No. D-USN-G11018-TX Rating LO, Naval Air Station Chase Field Base Closure and Realignment, Possible NAS Kingsville, TX and NAS Meridan, MS, Implementation, Beeville and Bee County, TX.

Summary EPA has no objection to the proposed project as described.

Final EISs

ERP No. F-BLM-G01010-NM, Fence Lake Federal Coal Project, Lease Approval Catron and Cibola Counties, NM.

Summary. EPA has no objection to the proposed Federal Coal leasing action as described.

Regulations

ERP No. R-NRC-A06170-00, 10 CFR parts 2, 50, and 54: Nuclear Power Plant License Renewal (55 FR 29043).

Summary: EPA will provide background information to NRC and recommends that NRC incorporate geophysical inspections/surveys and preventive damage procedures in seismically active plant locations.

Dated: October 23, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc 90-25404 Filed 10-25-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3854-9]

Transfer of Data to Contractors

AGENCY: Environmental Protection Agency.

ACTION: Notice of transfer of data and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) will transfer to its contractor, Science Applications International Corporation (SAIC), and their subcontractors: Arthur D. Little, CH2M Hill, Combustion Engineering Environmental, Industrial Economics, Inc., National Conference of State Legislatures, Radian Corporation, Ross & Associates, SCS Engineers, SRA Technologies, Inc., and Wade Miller Associates, information which has been, or will be submitted to EPA under the authority of the Resource Conservation and Recovery Act (RCRA). These firms will assist EPA in writing new standards, revising and expanding existing standards for the solid and hazardous waste management facilities to ensure that they are located, designed, and operated to protect human health and the environment. The contractor and their subcontractors will also evaluate waste management alternatives; develop guidance documents, training materials, and courses to aid in implementation of hazardous and solid waste regulations; and conduct special studies under section 8002 of RCRA on a number of industries that generate large volume waste. Some of the information may have a claim of business confidentiality.

DATES: Transfer of confidential data submitted to EPA will occur no sooner than November 2, 1990.

ADDRESSES: Comments should be sent to Margaret Lee, Document Control Officer, Office of Solid Waste (OS-312), U.S. Environmental Protection Agency, 401 M. Street SW., Washington, DC 20460. Comments should be identified as "Transfer of Confidential Data."

FOR FURTHER INFORMATION CONTACT: Margaret Lee, Document Control Officer, Office of Solid Waste (OS-312), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. (202) 382-3410.

SUPPLEMENTARY INFORMATION:

I. Transfer of Data

The U.S. Environmental Protection Agency is in the process of writing new standards, revising and expanding existing standards for the solid (municipal, commercial, industrial, and large volumes) and hazardous waste management facilities to ensure that they are located, designed, and operated to protect human health and the environment. The EPA is also evaluating waste management alternatives; developing guidance documents, training materials, and courses to aid in implementation of hazardous and solid waste regulations; and conducting special studies under Section 8002 of RCRA on industries that generate large volume wastes.

Under EPA Contract 68-WO-0025, SAIC and their subcontractors will assist the Waste Management Division, Land Disposal Branch and the Municipal Solid Waste Program of the Office of Solid Waste in writing new standards, revising and expanding existing standards for the solid and hazardous waste management facilities to ensure that they are located, designed, and operated to protect human health and the environment. In addition the contractor and their subcontractors will evaluate waste management alternatives; develop guidance documents, training materials, and courses to aid in implementation of hazardous and solid waste regulations; and conduct special studies under section 8002 of RCRA on a number of industries that generate large volume wastes. The information being transferred to SAIC and their subcontractors, may have been or will be claimed as confidential business information (CBI).

In accordance with 40 CFR 2.305(h), EPA has determined that SAIC and their subcontractors require access to confidential business information (CBI) submitted to EPA under the authority of RCRA to perform work satisfactorily under the above noted contract. EPA is issuing this notice to inform all submitters of confidential business information that EPA may transfer to these firms, on a need-to-know basis CBI collected under the authority of RCRA. Upon completing their review of materials submitted, SAIC and their subcontractors will return all such materials to EPA.

SAIC, and their subcontractors, have been authorized to have access to RCRA CBI under the EPA "Contractor Requirements for the Control and Security of RCRA Confidential Business Information" security manual. EPA will approve the security plans of the contractors and will inspect their facilities, and approve them, prior to RCRA CBI being transmitted to the contractors. Personnel from these firms will be required to sign nondisclosure agreements and be briefed on appropriate security procedures before they are permitted access to confidential information, in accordance with the "RCRA Confidential Business Information Security Manual" and the Contractor Requirements Manual.

Dated: September 27, 1990.

Sylvia K. Lowrance,

Acting Assistant Administrator.

[FR Doc. 90-25401 Filed 10-25-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

October 22, 1990.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037. For further information on this submission contact Judy Boley, Federal Communications Commission (202) 632-7513. Persons wishing to comment on this information collection should contact Bruce McConnell, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503 (202) 395-3785.

Please note: The Commission has requested emergency review of this item by October 24, 1990, under the provisions of 5 CFR 1320.18.

OMB Number: None.

Title: Local Exchange Carrier, Tariff Review Plan.

Action: New collection.

Respondents: Business or other for-profit.

Frequency of Response: One time filing requirement.

Estimated Annual Burden: 58 responses; 50 hours average burden per response; 2,900 hours total annual burden.

Needs and Uses: The information is needed to provide a simplified, consistent filing to reflect a new, lower authorized rate of return (adopted by the FCC in October 1990) and to initiate incentive regulation for

some local telephone companies (also adopted by the FCC in October 1990). Respondents are local telephone companies, with the exception of small telephone companies.

Federal Communications Commission
Donna R. Searcy,
Secretary.

BILLING CODE 6712-01-M

ATTACHMENT A--PRICE CAP
TARIFF REVIEW PLAN

TARIFF REVIEW PLAN DATA GUIDELINES

1. ALL AMOUNTS ARE TO BE IN WHOLE NUMBERS EXCEPT AS SPECIFIED ON A PARTICULAR TABLE.

2. ALL PERCENTAGES ARE TO BE CARRIED OUT TO 2 DECIMAL PLACES EXCEPT WHERE NOTED ON A PARTICULAR TABLE. EXAMPLE; 29 2/3 PERCENT SHOULD BE SHOWN AS 29.67

3. ALL RATIOS ARE TO BE CARRIED OUT TO 4 DECIMAL PLACES EXCEPT WHERE NOTED ON A PARTICULAR TABLE.

4. ALL FOOTNOTES, ADDITIONAL TO THOSE PREPRINTED ON FORMS, SHOULD BE PUT ON A SEPARATE FOOTNOTED PAGE AND INSERTED FOLLOWING THE FORM THEY REFERENCE. THE FOOTNOTE PAGE SHOULD INCLUDE THE COMPANY, STUDY AREA AND FORM TO WHICH THEY PERTAIN.

RULES FOR SUBMISSION OF DATA TO FCC ON MAGNETIC MEDIA

(FOR PRICE CAP AND TIER 1 NON-PRICE CAP COMPANIES ONLY)

1. ALL DATA SHOULD BE SUBMITTED ON 5.25 INCH PC FLOPPY DISKS DOUBLE SIDED DOUBLE DENSITY.

2. ALL FILES SHOULD BE CODED IN ASCII.

3. ALL FILES FOR A FILING ENTITY, I.E. STUDY AREA, OPERATING COMPANY, OR HOLDING COMPANY, SHOULD BE CONTAINED ON A SEPARATE DISK(S).

4. A SEPARATE FILE SHOULD BE PREPARED FOR EACH SEPARATE TABLE OF DATA, E.G., EXG-1, SUM-1, T1WS-1, ETC. THE FILE NAME, FOR EACH TABLE, IS A COMBINATION OF COSA (CO = COMPANY, SA = STUDY AREA, E.G., THE COSA FOR PACIFIC BELL OF CALIFORNIA IS PTCA) PLUS THE TABLE NAME. THE TABLE NAME IS THE TABLE NAME WITHOUT THE HYPHEN, E.G. THE TABLE NAME FOR EXG-1 IS EXG1. THE TABLE NAMES FOR THE RATE OF RETURN CARRIERS EXCLUDE 'T1' OR 'T2', E.G. THE TABLE NAME FOR T1WS-1 IS WS1.

   FOR EXAMPLE, THE FILE NAME FOR TABLE EXG-1 FOR PACIFIC BELL-CALIFORNIA SHOULD BE PTCAEXG1.

5. EACH DATA FILE SHOULD CONTAIN ONLY TABLE ROW NUMBERS AND THE APPROPRIATE NUMBER OF DATA ITEMS PER ROW. DATA MUST BE DELIMITED BY EITHER A COMMA OR SPACE, E.G.:

   FILENAME PTCAEXG1 [FILE FOR PACIFIC BELL, TABLE SUM-1]
   100,12345,12356,12367
   110,10010,10021,10032

   ETC.

   - OR -

   100 12345 12356 12367
   110 10010 10021 10032

   ETC.

6. ANY DATA ITEM FOR WHICH NO VALID DATA EXISTS FOR A PARTICULAR FILING ENTITY SHOULD BE POPULATED WITH -99999. IF THE DATA ITEM IS A TRUE ZERO, THEN A 0 (ZERO) SHOULD BE ENTERED.

7. ANY NON-NUMERIC DATA MUST BE ENCLOSED IN QUOTATION MARKS. E.G. DATE FIELD IN EXHIBIT T1WS-3 MUST BE SHOWN AS "07/16/90".

FILING ENTITY:

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1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
PRICE OUT
($000)

		BASE PERIOD DEMAND X 7/1/90 RATES (A)	BASE PERIOD DEMAND X CURRENT RATES (B)	BASE PERIOD DEMAND X PROPOSED RATES (C)
	COMMON LINE BASKET			
100	END USER COMMON LINE			
110	CARRIER COMMON LINE			
120	TOTAL COMMON LINE			
	TRAFFIC SENSITIVE BASKET			
130	LOCAL SWITCHING			
140	LOCAL TRANSPORT			
150	INFORMATION			
160	TOTAL SWITCHED ACCESS			
	SPECIAL ACCESS BASKET			
170	VOICEGRADE, WATS, METALLIC, & TELEGRAPH			
180	AUDIO & VIDEO			
190	HIGH CAP & DDS			
200	WIDEBAND			
210	TOTAL SPECIAL ACCESS			
	INTEREXCHANGE BASKET			
220	TOTAL INTEREXCHANGE			

FILING ENTITY:

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1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
PRICE OUT
($000)

		PCI	API	SBI	UPPER SBI LIMIT	LOWER SBI LIMIT
		(D)	(E)	(F)	(G)	(H)
	COMMON LINE BASKET					
100	END USER COMMON LINE	N/A	N/A	N/A	N/A	N/A
110	CARRIER COMMON LINE*		N/A	N/A	N/A	N/A
120	TOTAL COMMON LINE		N/A	N/A	N/A	N/A
	TRAFFIC SENSITIVE BASKET					
130	LOCAL SWITCHING	N/A	N/A			
140	LOCAL TRANSPORT	N/A	N/A			
150	INFORMATION	N/A	N/A			
160	TOTAL SWITCHED ACCESS			N/A	N/A	N/A
	SPECIAL ACCESS BASKET					
170	VOICEGRADE, WATS, METALLIC, & TELEGRAPH	N/A	N/A			
180	AUDIO & VIDEO	N/A	N/A			
190	HIGH CAP & DDS	N/A	N/A			
200	WIDEBAND	N/A	N/A			
210	TOTAL SPECIAL ACCESS			N/A	N/A	N/A
	INTEREXCHANGE BASKET					
220	TOTAL INTEREXCHANGE			N/A	N/A	N/A

* FOR ROW 110(D), SHOW HYPOTHETICAL CAPPED CCL PER MINUTE RATE, I.E., CCL MOU RATE FROM SECTION 61.46(d) OF THE RULES.

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1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
COMMON LINE BASKET
(REVENUES AND MINUTES IN THOUSANDS)

		BASE PERIOD DEMAND	BASE PERIOD DEMAND X 7/1/90 RATES	BASE PERIOD DEMAND X CURRENT RATES	BASE PERIOD DEMAND X PROPOSED RATES
		(A)	(B)	(C)	(D)
	END USER COMMON LINE				
100	MULTILINE BUSINESS EUCL				
110	RES & SINGLE LINE BUS EUCL				
120	LIFELINE				
130	SPECIAL ACCESS SURCHARGE				
	CARRIER COMMON LINE				
140	TERMINATING CCL PREM				
150	TERMINATING CCL NON-PREM				
160	ORIGINATING CCL PREM				
170	ORIGINATING CCL NON-PREM				
180	TOTAL BASKET	N/A			

FILING ENTITY:

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1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
TRAFFIC SENSITIVE BASKET
(REVENUES AND MINUTES IN THOUSANDS)

		BASE PERIOD DEMAND	BASE PERIOD DEMAND X 7/1/90 RATES	BASE PERIOD DEMAND X CURRENT RATES	BASE PERIOD DEMAND X PROPOSED RATES	INDEX RESULTS
		(A)	(B)	(C)	(D)	(E)
	LOCAL SWITCHING SERVICE CATEGORY					
200	PREMIUM SWITCHING LS1					N/A
210	PREMIUM SWITCHING LS2					N/A
220	NON-PREM SWITCHING					N/A
230	EQUAL ACCESS					N/A
240	OTHER SWITCHING	N/A				N/A
250	TOTAL SERVICE CAT	N/A				N/A
260	SBI	N/A	N/A	N/A	N/A	XX.XX
270	UPPER SBI LIMIT	N/A	N/A	N/A	N/A	XXX.XX
280	LOWER SBI LIMIT	N/A	N/A	N/A	N/A	XX.XX
	LOCAL TRANSPORT SERVICE CATEGORY					
	PREMIUM LOCAL TRANSPORT:					
290	LOCAL TRANS - MB1					N/A
300	LOCAL TRANS - MB2					N/A
310	LOCAL TRANS - MB3					N/A
320	LOCAL TRANS - MB4					N/A
330	LOCAL TRANS - MB5					N/A
340	LOCAL TRANS - MB6					N/A
350	LOCAL TRANS - MB7					N/A
360	LOCAL TRANS - MB8					N/A
370	LOCAL TRANS - MB9					N/A
380	LOCAL TRANS - MB10					N/A
390	MMUC PER LINE OR TRUNK					N/A
400	TERMINATION					N/A
410	FACILITY					N/A

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1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
TRAFFIC SENSITIVE BASKET
(REVENUES AND MINUTES IN THOUSANDS)

		BASE PERIOD DEMAND	BASE PERIOD DEMAND X 7/1/90 RATES	BASE PERIOD DEMAND X CURRENT RATES	BASE PERIOD DEMAND X PROPOSED RATES	INDEX RESULTS
		(A)	(B)	(C)	(D)	(E)
	LOCAL TRANSPORT SERVICE CATEGORY (CONTINUED)					
	NON-PREM LOCAL TRANSPORT:					
500	LOCAL TRANS - MB1					N/A
510	LOCAL TRANS - MB2					N/A
520	LOCAL TRANS - MB3					N/A
530	LOCAL TRANS - MB4					N/A
540	LOCAL TRANS - MB5					N/A
550	LOCAL TRANS - MB6					N/A
560	LOCAL TRANS - MB7					N/A
570	LOCAL TRANS - MB8					N/A
580	LOCAL TRANS - MB9					N/A
590	LOCAL TRANS - MB10					N/A
600	MMUC PER LINE OR TRUNK					N/A
610	TERMINATION					N/A
620	FACILITY					N/A
630	INSTALLATION PER LN OR TRK	N/A				N/A
640	OTHER TRANSPORT	N/A				N/A
650	TOTAL SERVICE CAT	N/A				N/A
660	SBI	N/A	N/A	N/A	N/A	XX.XX
670	UPPER SBI LIMIT	N/A	N/A	N/A	N/A	XXX.XX
680	LOWER SBI LIMIT	N/A	N/A	N/A	N/A	XX.XX

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1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
TRAFFIC SENSITIVE BASKET
(REVENUES AND MINUTES IN THOUSANDS)

		BASE PERIOD DEMAND	BASE PERIOD DEMAND X 7/1/90 RATES	BASE PERIOD DEMAND X CURRENT RATES	BASE PERIOD DEMAND X PROPOSED RATES	INDEX RESULTS
		(A)	(B)	(C)	(D)	(E)
	INFORMATION SERVICE CATEGORY					
700	INFORMATION - PER MSG.					N/A
710	INFO - PREMIUM SURCHARGE					N/A
720	INFO - NON-PREM SURCHARGE					N/A
730	INFORMATION - OTHER	N/A				N/A
740	TOTAL SERVICE CAT	N/A				N/A
750	SBI	N/A	N/A	N/A	N/A	XX.XX
760	UPPER SBI LIMIT	N/A	N/A	N/A	N/A	XXX.XX
770	LOWER SBI LIMIT	N/A	N/A	N/A	N/A	XX.XX
780	TOTAL BASKET	N/A				N/A
790	TOTAL API	N/A	N/A	N/A	N/A	XX.XX
800	TOTAL PCI	N/A	N/A	N/A	N/A	XX.XX

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1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
SPECIAL ACCESS BASKET
(REVENUES AND MINUTES IN THOUSANDS)

		BASE PERIOD DEMAND		BASE PERIOD DEMAND X 7/1/90 RATES		BASE PERIOD DEMAND X CURRENT RATES	
		FIXED	VARIABLE	FIXED	VARIABLE	FIXED	VARIABLE
		(A)	(B)	(C)	(D)	(E)	(F)
	VOICE GRADE, WATS, METALLIC & TELEGRAPH SERVICE CATEGORY						
	VOICE GRADE & WATS:						
900	CHAN TERM - 2 WIRE		N/A		N/A		N/A
910	CHAN TERM - 4 WIRE		N/A		N/A		N/A
	INTER-OFFICE MILEAGE:						
920	V G & WATS - MB1						
930	V G & WATS - MB2						
940	V G & WATS - MB3						
950	V G & WATS - MB4						
960	V G & WATS - MB5						
970	V G & WATS - MB6						
980	V G & WATS - MB7						
990	V G & WATS - MB8						
1000	V G & WATS - MB9						
1010	V G & WATS - MB10						
1020	OTHER VOICE GRADE	N/A	N/A				
	METALLIC:						
1030	CHAN TERM		N/A		N/A		N/A
1040	INTER-OFFICE MILEAGE						
1050	OTHER	N/A	N/A				
	TELEGRAPH:						
1060	CHAN TERM - 2 WIRE		N/A		N/A		N/A
1070	CHAN TERM - 4 WIRE		N/A		N/A		N/A
1080	INTER-OFFICE MILEAGE						
1090	OTHER	N/A	N/A				
1100	OTHER	N/A	N/A				
1110	TOTAL SERVICE CAT	N/A	N/A				
1120	SBI	N/A	N/A	N/A	N/A	N/A	N/A
1130	UPPER SBI LIMIT	N/A	N/A	N/A	N/A	N/A	N/A
1140	LOWER SBI LIMIT	N/A	N/A	N/A	N/A	N/A	N/A

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1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
SPECIAL ACCESS BASKET
(REVENUES AND MINUTES IN THOUSANDS)

		BASE PERIOD DEMAND X PROPOSED RATES		INDEX
		FIXED	VARIABLE	RESULTS
		(G)	(H)	(I)
	VOICE GRADE, WATS, METALLIC & TELEGRAPH SERVICE CATEGORY			
	VOICE GRADE & WATS:			
900	CHAN TERM - 2 WIRE		N/A	N/A
910	CHAN TERM - 4 WIRE		N/A	N/A
	INTER-OFFICE MILEAGE:			
920	V G & WATS - MB1			N/A
930	V G & WATS - MB2			N/A
940	V G & WATS - MB3			N/A
950	V G & WATS - MB4			N/A
960	V G & WATS - MB5			N/A
970	V G & WATS - MB6			N/A
980	V G & WATS - MB7			N/A
990	V G & WATS - MB8			N/A
1000	V G & WATS - MB9			N/A
1010	V G & WATS - MB10			N/A
1020	OTHER VOICE GRADE			N/A
	METALLIC:			
1030	CHAN TERM		N/A	N/A
1040	INTER-OFFICE MILEAGE			N/A
1050	OTHER			N/A
	TELEGRAPH:			
1060	CHAN TERM - 2 WIRE		N/A	N/A
1070	CHAN TERM - 4 WIRE		N/A	N/A
1080	INTER-OFFICE MILEAGE			N/A
1090	OTHER			N/A
1100	OTHER			N/A
1110	TOTAL SERVICE CAT			N/A
1120	SBI	N/A	N/A	XX.XX
1130	UPPER SBI LIMIT	N/A	N/A	XXX.XX
1140	LOWER SBI LIMIT	N/A	N/A	XX.XX

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1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
SPECIAL ACCESS BASKET
(REVENUES AND MINUTES IN THOUSANDS)

		BASE PERIOD DEMAND	BASE PERIOD DEMAND X 7/1/90 RATES	BASE PERIOD DEMAND X CURRENT RATES	BASE PERIOD DEMAND X PROPOSED RATES	INDEX RESULTS
		(A)	(B)	(C)	(D)	(E)
	AUDIO & VIDEO SERVICE CATEGORY					
	AUDIO:					
1200	CHAN TERM					N/A
1210	INTER-OFFICE MILEAGE					N/A
1220	OTHER	N/A				N/A
	VIDEO:					
1230	CHAN TERM					N/A
1240	INTER-OFFICE MILEAGE					N/A
1250	OTHER	N/A				N/A
1260	TOTAL SERVICE CAT	N/A				N/A
1270	SBI	N/A	N/A	N/A	N/A	XX.XX
1280	UPPER SBI LIMIT	N/A	N/A	N/A	N/A	XXX.XX
1290	LOWER SBI LIMIT	N/A	N/A	N/A	N/A	XX.XX

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1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
SPECIAL ACCESS BASKET
(REVENUES AND MINUTES IN THOUSANDS)

		BASE PERIOD DEMAND	BASE PERIOD DEMAND X 7/1/90 RATES	BASE PERIOD DEMAND X CURRENT RATES	BASE PERIOD DEMAND X PROPOSED RATES	INDEX RESULTS
		(A)	(B)	(C)	(D)	(E)
	HIGH CAP & DDS SERVICE CATEGORY					
	DS1 SUB-CAT:					
1400	CHAN TERM					N/A
	INTER-OFFICE MILEAGE:					
1410	DS1 - MB1					N/A
1420	DS1 - MB2					N/A
1430	DS1 - MB3					N/A
1440	DS1 - MB4					N/A
1450	DS1 - MB5					N/A
1460	DS1 - MB6					N/A
1470	DS1 - MB7					N/A
1480	DS1 - MB8					N/A
1490	DS1 - MB9					N/A
1500	DS1 - MB10					N/A
1510	OTHER	N/A				N/A
1520	DS1 SUBINDEX	N/A	N/A	N/A	N/A	XX.XX
1530	UPPER LIMIT	N/A	N/A	N/A	N/A	XXX.XX
1540	LOWER LIMIT	N/A	N/A	N/A	N/A	XX.XX

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1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
SPECIAL ACCESS BASKET
(REVENUES AND MINUTES IN THOUSANDS)

		BASE PERIOD DEMAND	BASE PERIOD DEMAND X 7/1/90 RATES	BASE PERIOD DEMAND X CURRENT RATES	BASE PERIOD DEMAND X PROPOSED RATES	INDEX RESULTS
		(A)	(B)	(C)	(D)	(E)
	HIGH CAP & DDS SERVICE CATEGORY (CONTINUED)					
	DS3 SUB-CAT:					
1600	CHAN TERM					N/A
	INTER-OFFICE MILEAGE:					
1610	DS3 - MB1					N/A
1620	DS3 - MB2					N/A
1630	DS3 - MB3					N/A
1640	DS3 - MB4					N/A
1650	DS3 - MB5					N/A
1660	DS3 - MB6					N/A
1670	DS3 - MB7					N/A
1680	DS3 - MB8					N/A
1690	DS3 - MB9					N/A
1700	DS3 - MB10					N/A
1710	OTHER	N/A				N/A
1720	DS3 SUBINDEX	N/A	N/A	N/A	N/A	XX.XX
1730	UPPER LIMIT	N/A	N/A	N/A	N/A	XXX.XX
1740	LOWER LIMIT	N/A	N/A	N/A	N/A	XX.XX
	DDS:					
1750	CHAN TERM					N/A
1760	INTER-OFFICE MILEAGE					N/A
1770	OTHER	N/A				N/A
1780	TOTAL SERVICE CAT	N/A				N/A
1790	SBI	N/A	N/A	N/A	N/A	XX.XX
1800	UPPER SBI LIMIT	N/A	N/A	N/A	N/A	XXX.XX
1810	LOWER SBI LIMIT	N/A	N/A	N/A	N/A	XX.XX

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1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
SPECIAL ACCESS BASKET
(REVENUES AND MINUTES IN THOUSANDS)

	WIDEBAND SERVICE CATEGORY	BASE PERIOD DEMAND (A)	BASE PERIOD DEMAND X 7/1/93 RATES (B)	BASE PERIOD DEMAND X CURRENT RATES (C)	BASE PERIOD DEMAND X PROPOSED RATES (D)	INDEX RESULTS (E)
	DATA:					
1900	CHAN TERM					N/A
1910	INTER-OFFICE MILEAGE					N/A
1920	OTHER	N/A				N/A
	ANALOG:					
1930	CHAN TERM					N/A
1940	INTER-OFFICE MILEAGE					N/A
1950	OTHER	N/A				N/A
1960	OTHER WIDEBAND	N/A				N/A
1970	TOTAL SERVICE CAT	N/A				N/A
1980	SBI	N/A	N/A	N/A	N/A	XX.XX
1990	UPPER SBI LIMIT	N/A	N/A	N/A	N/A	XXX.XX
2000	LOWER SBI LIMIT	N/A	N/A	N/A	N/A	XX.XX
2010	TOTAL BASKET	N/A				N/A
2020	TOTAL API	N/A	N/A	N/A	N/A	XX.XX
2030	TOTAL PCI	N/A	N/A	N/A	N/A	XX.XX

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1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
INTEREXCHANGE BASKET
(REVENUES AND MINUTES IN THOUSANDS)

INTEREXCHANGE		BASE PERIOD DEMAND (A)	BASE PERIOD DEMAND X 7/1/90 RATES (B)	BASE PERIOD DEMAND X CURRENT RATES (C)	BASE PERIOD DEMAND X PROPOSED RATES (D)	INDEX RESULTS (E)
2100	TOTAL BASKET	N/A				N/A
2110	TOTAL API	N/A	N/A	N/A	N/A	XX.XX
2120	TOTAL PCI	N/A	N/A	N/A	N/A	XX.XX

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1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
COMMON LINE BASKET
(REVENUES IN THOUSANDS)

		7/1/90 RATES	CURRENT RATES	PROPOSED RATES	BASE PER DEM X PROP RATES MINUS BASE PER DEM X CUR RATES
		(A)	(B)	(C)	(D)
	END USER COMMON LINE				
100	MULTILINE BUSINESS EUCL*				
110	RES & SINGLE LINE BUS EUCL*				
120	LIFELINE*				
130	SPECIAL ACCESS SURCHARGE				
	CARRIER COMMON LINE				
140	TERMINATING CCL PREM				
150	TERMINATING CCL NON-PREM				
160	ORIGINATING CCL PREM				
170	ORIGINATING CCL NON-PREM				
180	TOTAL BASKET	N/A	N/A	N/A	

* MAY BE COMPOSITE RATE.

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1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
TRAFFIC SENSITIVE BASKET
(REVENUES IN THOUSANDS)

		7/1/90 RATES	CURRENT RATES	PROPOSED RATES	BASE PER DEM X PROP RATES MINUS BASE PER DEM X CUR RATES
		(A)	(B)	(C)	(D)
	LOCAL SWITCHING SERVICE CATEGORY				
200	PREMIUM SWITCHING LS1				
210	PREMIUM SWITCHING LS2				
220	NON-PREM SWITCHING				
230	EQUAL ACCESS				
240	OTHER SWITCHING	N/A	N/A	N/A	
250	TOTAL SERVICE CAT	N/A	N/A	N/A	
260	SBI	N/A	N/A	N/A	N/A
270	UPPER SBI LIMIT	N/A	N/A	N/A	N/A
280	LOWER SBI LIMIT	N/A	N/A	N/A	N/A
	LOCAL TRANSPORT SERVICE CATEGORY				
	PREMIUM LOCAL TRANSPORT:				
290	LOCAL TRANS - MB1				
300	LOCAL TRANS - MB2				
310	LOCAL TRANS - MB3				
320	LOCAL TRANS - MB4				
330	LOCAL TRANS - MB5				
340	LOCAL TRANS - MB6				
350	LOCAL TRANS - MB7				
360	LOCAL TRANS - MB8				
370	LOCAL TRANS - MB9				
380	LOCAL TRANS - MB10				
390	MMUC PER LINE OR TRUNK				
400	TERMINATION				
410	FACILITY				

FILING ENTITY:

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1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
TRAFFIC SENSITIVE BASKET
(REVENUES IN THOUSANDS)

		7/1/90 RATES	CURRENT RATES	PROPOSED RATES	BASE PER DEM X PROP RATES MINUS BASE PER DEM X CUR RATES
		(A)	(B)	(C)	(D)
	LOCAL TRANSPORT SERVICE CATEGORY (CONTINUED)				
	NON-PREM LOCAL TRANSPORT:				
500	LOCAL TRANS - MB1				
510	LOCAL TRANS - MB2				
520	LOCAL TRANS - MB3				
530	LOCAL TRANS - MB4				
540	LOCAL TRANS - MB5				
550	LOCAL TRANS - MB6				
560	LOCAL TRANS - MB7				
570	LOCAL TRANS - MB8				
580	LOCAL TRANS - MB9				
590	LOCAL TRANS - MB10				
600	MMUC PER LINE OR TRUNK				
610	TERMINATION				
620	FACILITY				
630	INSTALLATION PER LN OR TRK	N/A	N/A	N/A	
640	OTHER TRANSPORT	N/A	N/A	N/A	
650	TOTAL SERVICE CAT	N/A	N/A	N/A	
660	SBI	N/A	N/A	N/A	N/A
670	UPPER SBI LIMIT	N/A	N/A	N/A	N/A
680	LOWER SBI LIMIT	N/A	N/A	N/A	N/A

FILING ENTITY:

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1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
TRAFFIC SENSITIVE BASKET
(REVENUES IN THOUSANDS)

		7/1/90 RATES	CURRENT RATES	PROPOSED RATES	BASE PER DEM X PROP RATES MINUS BASE PER DEM X CUR RATES
		(A)	(B)	(C)	(D)
	INFORMATION SERVICE CATEGORY				
700	INFORMATION - PER MSG.				
710	INFO - PREMIUM SURCHARGE				
720	INFO - NON-PREM SURCHARGE				
730	INFORMATION - OTHER	N/A	N/A	N/A	
740	TOTAL SERVICE CAT	N/A	N/A	N/A	
750	SBI	N/A	N/A	N/A	N/A
760	UPPER SBI LIMIT	N/A	N/A	N/A	N/A
770	LOWER SBI LIMIT	N/A	N/A	N/A	N/A
780	TOTAL BASKET	N/A	N/A	N/A	
790	TOTAL API	N/A	N/A	N/A	N/A
800	TOTAL PCI	N/A	N/A	N/A	N/A

FILING ENTITY:

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1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
SPECIAL ACCESS BASKET
(REVENUES IN THOUSANDS)

		7/1/90 RATES		CURRENT RATES	
		FIXED	VARIABLE	FIXED	VARIABLE
		(A)	(B)	(C)	(D)
	VOICE GRADE, WATS, METALLIC & TELEGRAPH SERVICE CATEGORY				
	VOICE GRADE & WATS:				
900	CHAN TERM - 2 WIRE		N/A		N/A
910	CHAN TERM - 4 WIRE		N/A		N/A
	INTER-OFFICE MILEAGE:				
920	V G & WATS - MB1				
930	V G & WATS - MB2				
940	V G & WATS - MB3				
950	V G & WATS - MB4				
960	V G & WATS - MB5				
970	V G & WATS - MB6				
980	V G & WATS - MB7				
990	V G & WATS - MB8				
1000	V G & WATS - MB9				
1010	V G & WATS - MB10				
1020	OTHER VOICE GRADE	N/A	N/A	N/A	N/A
	METALLIC:				
1030	CHAN TERM		N/A		N/A
1040	INTER-OFFICE MILEAGE	N/A	N/A	N/A	N/A
1050	OTHER	N/A	N/A	N/A	N/A
	TELEGRAPH:				
1060	CHAN TERM - 2 WIRE		N/A		N/A
1070	CHAN TERM - 4 WIRE		N/A		N/A
1080	INTER-OFFICE MILEAGE	N/A	N/A	N/A	N/A
1090	OTHER	N/A	N/A	N/A	N/A
1100	OTHER	N/A	N/A	N/A	N/A
1110	TOTAL SERVICE CAT	N/A	N/A	N/A	N/A
1120	SBI	N/A	N/A	N/A	N/A
1130	UPPER SBI LIMIT	N/A	N/A	N/A	N/A
1140	LOWER SBI LIMIT	N/A	N/A	N/A	N/A

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1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
SPECIAL ACCESS BASKET
(REVENUES IN THOUSANDS)

		PROPOSED RATES		BASE PERIOD DEMAND X PROPOSED RATES MINUS BASE PERIOD DEMAND X CURRENT RATES	
		FIXED	VARIABLE	FIXED	VARIABLE
		(E)	(F)	(G)	(H)
	VOICE GRADE, WATS, METALLIC & TELEGRAPH SERVICE CATEGORY				
	VOICE GRADE & WATS:				
900	CHAN TERM - 2 WIRE		N/A		N/A
910	CHAN TERM - 4 WIRE		N/A		N/A
	INTER-OFFICE MILEAGE:				
920	V G & WATS - MB1				
930	V G & WATS - MB2				
940	V G & WATS - MB3				
950	V G & WATS - MB4				
960	V G & WATS - MB5				
970	V G & WATS - MB6				
980	V G & WATS - MB7				
990	V G & WATS - MB8				
1000	V G & WATS - MB9				
1010	V G & WATS - MB10				
1020	OTHER VOICE GRADE	N/A	N/A		
	METALLIC:				
1030	CHAN TERM		N/A		N/A
1040	INTER-OFFICE MILEAGE	N/A	N/A		
1050	OTHER	N/A	N/A		
	TELEGRAPH:				
1060	CHAN TERM - 2 WIRE		N/A		N/A
1070	CHAN TERM - 4 WIRE		N/A		N/A
1080	INTER-OFFICE MILEAGE	N/A	N/A		
1090	OTHER	N/A	N/A		
1100	OTHER	N/A	N/A		
1110	TOTAL SERVICE CAT	N/A	N/A		
1120	SBI	N/A	N/A	N/A	N/A
1130	UPPER SBI LIMIT	N/A	N/A	N/A	N/A
1140	LOWER SBI LIMIT	N/A	N/A	N/A	N/A

FILING ENTITY:

1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
SPECIAL ACCESS BASKET
(REVENUES IN THOUSANDS)

		7/1/90 RATES	CURRENT RATES	PROPOSED RATES	BASE PER DEM X PROP RATES MINUS BASE PER DEM X CUR RATES
		(A)	(B)	(C)	(D)
	AUDIO & VIDEO SERVICE CATEGORY				
	AUDIO:				
1200	CHAN TERM	N/A	N/A	N/A	
1210	INTER-OFFICE MILEAGE	N/A	N/A	N/A	
1220	OTHER	N/A	N/A	N/A	
	VIDEO:				
1230	CHAN TERM	N/A	N/A	N/A	
1240	INTER-OFFICE MILEAGE	N/A	N/A	N/A	
1250	OTHER	N/A	N/A	N/A	
1260	TOTAL SERVICE CAT	N/A	N/A	N/A	
1270	SBI	N/A	N/A	N/A	N/A
1280	UPPER SBI LIMIT	N/A	N/A	N/A	N/A
1290	LOWER SBI LIMIT	N/A	N/A	N/A	N/A

FILING ENTITY:

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1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
SPECIAL ACCESS BASKET
(REVENUES IN THOUSANDS)

		7/1/90 RATES	CURRENT RATES	PROPOSED RATES	BASE PER DEM X PROP RATES MINUS BASE PER DEM X CUR RATES
		(A)	(B	(C)	(D)
	HIGH CAP & DDS SERVICE CATEGORY				
	DS1 SUB-CAT:				
1400	CHAN TERM				
	INTER-OFFICE MILEAGE:				
1410	DS1 - MB1				
1420	DS1 - MB2				
1430	DS1 - MB3				
1440	DS1 - MB4				
1450	DS1 - MB5				
1460	DS1 - MB6				
1470	DS1 - MB7				
1480	DS1 - MB8				
1490	DS1 - MB9				
1500	DS1 - MB10				
1510	OTHER	N/A	N/A	N/A	
1520	DS1 SUBINDEX	N/A	N/A	N/A	N/A
1530	UPPER LIMIT	N/A	N/A	N/A	N/A
1540	LOWER LIMIT	N/A	N/A	N/A	N/A

FILING ENTITY:

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1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
SPECIAL ACCESS BASKET
(REVENUES IN THOUSANDS)

		7/1/90 RATES	CURRENT RATES	PROPOSED RATES	BASE PER DEM X PROP RATES MINUS BASE PER DEM X CUR RATES
		(A)	(B)	(C)	(D)
	HIGH CAP & DDS SERVICE CATEGORY (CONTINUED)				
	DS3 SUB-CAT:				
1600	CHAN TERM				
	INTER-OFFICE MILEAGE:				
1610	DS3 - MB1				
1620	DS3 - MB2				
1630	DS3 - MB3				
1640	DS3 - MB4				
1650	DS3 - MB5				
1660	DS3 - MB6				
1670	DS3 - MB7				
1680	DS3 - MB8				
1690	DS3 - MB9				
1700	DS3 - MB10				
1710	OTHER	N/A	N/A	N/A	
1720	DS3 SUBINDEX	N/A	N/A	N/A	N/A
1730	UPPER LIMIT	N/A	N/A	N/A	N/A
1740	LOWER LIMIT	N/A	N/A	N/A	N/A
	DDS:				
1750	CHAN TERM				
1760	INTER-OFFICE MILEAGE				
1770	OTHER	N/A	N/A	N/A	
1780	TOTAL SERVICE CAT	N/A	N/A	N/A	
1790	SBI	N/A	N/A	N/A	N/A
1800	UPPER SBI LIMIT	N/A	N/A	N/A	N/A
1810	LOWER SBI LIMIT	N/A	N/A	N/A	N/A

FILING ENTITY:

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1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
SPECIAL ACCESS BASKET
(REVENUES IN THOUSANDS)

		7/1/90 RATES	CURRENT RATES	PROPOSED RATES	BASE PER DEM X PROP RATES MINUS BASE PER DEM X CUR RATES
		(A)	(B)	(C)	(D)
	WIDEBAND SERVICE CATEGORY				
	DATA:				
1900	CHAN TERM	N/A	N/A	N/A	
1910	INTER-OFFICE MILEAGE	N/A	N/A	N/A	
1920	OTHER	N/A	N/A	N/A	
	ANALOG:				
1930	CHAN TERM	N/A	N/A	N/A	
1940	INTER-OFFICE MILEAGE	N/A	N/A	N/A	
1950	OTHER	N/A	N/A	N/A	
1960	OTHER WIDEBAND	N/A	N/A	N/A	
1970	TOTAL SERVICE CAT	N/A	N/A	N/A	
1980	SBI	N/A	N/A	N/A	N/A
1990	UPPER SBI LIMIT	N/A	N/A	N/A	N/A
2000	LOWER SBI LIMIT	N/A	N/A	N/A	N/A
2010	TOTAL BASKET	N/A	N/A	N/A	
2020	TOTAL API	N/A	N/A	N/A	N/A
2030	TOTAL PCI	N/A	N/A	N/A	N/A

FILING ENTITY:

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1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
INTEREXCHANGE BASKET
(REVENUES IN THOUSANDS)

INTEREXCHANGE		7/1/90 RATES (A)	CURRENT RATES (B)	PROPOSED RATES (C)	BASE PER DEM X PROP RATES MINUS BASE PER DEM X CUR RATES (D)
2100	TOTAL BASKET	N/A	N/A	N/A	
2110	TOTAL API	N/A	N/A	N/A	N/A
2120	TOTAL PCI	N/A	N/A	N/A	N/A

FILING ENTITY:

EXG-1
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1991 TRANSITION FILING
PRICE CAP TARIFF REVIEW PLAN
EFFECT OF EXOGENOUS CHANGES
($000)

	SERVICE BASKET	DISALLOWANCE ADJUSTMENT (A)	ROR REPRESCRIPTION (B)	LTS/TRS (C)	OTHER (D)	COMBINED EFFECT (E)
	COMMON LINE:					
100	AVERAGE NET INVESTMENT	N/A		N/A		N/A
110	TAX EFFECT	N/A		N/A		N/A
120	REVENUE EFFECT					N/A
130	BASE REVENUE *					N/A
140	DELTA Z / R **					
	TRAFFIC SENSITIVE:					
150	AVERAGE NET INVESTMENT	N/A		N/A		N/A
160	TAX EFFECT	N/A		N/A		N/A
170	REVENUE EFFECT			N/A		N/A
180	BASE REVENUE *			N/A		N/A
190	DELTA Z / R **			N/A		
	SPECIAL ACCESS:					
200	AVERAGE NET INVESTMENT	N/A		N/A		N/A
210	TAX EFFECT	N/A		N/A		N/A
220	REVENUE EFFECT			N/A		N/A
230	BASE REVENUE *			N/A		N/A
240	DELTA Z / R **			N/A		
	INTEREXCHANGE:					
250	AVERAGE NET INVESTMENT	N/A	N/A	N/A		N/A
260	TAX EFFECT	N/A	N/A	N/A		N/A
270	REVENUE EFFECT	N/A	N/A	N/A		N/A
280	BASE REVENUE	N/A	N/A	N/A		N/A
290	DELTA Z / R	N/A	N/A	N/A		

* BASE REVENUE FOR COLUMN A EQUALS 7/1/90 REVENUE REQUIREMENT.

** DELTA Z / R = REVENUE EFFECT DIVIDED BY BASE REVENUE, I.E., ROW 120 / ROW 130, ROW 170 / ROW 180, ETC
FOR COLUMN E ONLY, DELTA Z / R = ((1 + ROW 140A) X (1 + ROW 140B + ROW 140C) - 1), ETC.

ATTACHMENT B--RATE OF RETURN
TARIFF REVIEW PLAN

TARIFF REVIEW PLAN DATA GUIDELINES

1. ALL AMOUNTS ARE TO BE IN WHOLE NUMBERS EXCEPT AS SPECIFIED ON A PARTICULAR TABLE.

2. ALL PERCENTAGES ARE TO BE CARRIED OUT TO 2 DECIMAL PLACES EXCEPT WHERE NOTED ON A PARTICULAR TABLE. EXAMPLE; 29 2/3 PERCENT SHOULD BE SHOWN AS 29.67

3. ALL RATIOS ARE TO BE CARRIED OUT TO 4 DECIMAL PLACES EXCEPT WHERE NOTED ON A PARTICULAR TABLE.

4. ALL FOOTNOTES, ADDITIONAL TO THOSE PREPRINTED ON FORMS, SHOULD BE PUT ON A SEPARATE FOOTNOTED PAGE AND INSERTED FOLLOWING THE FORM THEY REFERENCE. THE FOOTNOTE PAGE SHOULD INCLUDE THE COMPANY, STUDY AREA AND FORM TO WHICH THEY PERTAIN.

RULES FOR SUBMISSION OF DATA TO FCC ON MAGNETIC MEDIA

(FOR PRICE CAP AND TIER 1 NON-PRICE CAP COMPANIES ONLY)

1. ALL DATA SHOULD BE SUBMITTED ON 5.25 INCH PC FLOPPY DISKS DOUBLE SIDED DOUBLE DENSITY.

2. ALL FILES SHOULD BE CODED IN ASCII.

3. ALL FILES FOR A FILING ENTITY, I.E. STUDY AREA, OPERATING COMPANY, OR HOLDING COMPANY, SHOULD BE CONTAINED ON A SEPARATE DISK(S).

4. A SEPARATE FILE SHOULD BE PREPARED FOR EACH SEPARATE TABLE OF DATA, E.G., EXG-1, SUM-1, T1WS-1, ETC. THE FILE NAME, FOR EACH TABLE, IS A COMBINATION OF COSA (CO = COMPANY, SA = STUDY AREA, E.G., THE COSA FOR PACIFIC BELL OF CALIFORNIA IS PTCA) PLUS THE TABLE NAME. THE TABLE NAME IS THE TABLE NAME WITHOUT THE HYPHEN, E.G. THE TABLE NAME FOR EXG-1 IS EXG1. THE TABLE NAMES FOR THE RATE OF RETURN CARRIERS EXCLUDE 'T1' OR 'T2', E.G. THE TABLE NAME FOR T1WS-1 IS WS1.

   FOR EXAMPLE, THE FILE NAME FOR TABLE EXG-1 FOR PACIFIC BELL-CALIFORNIA SHOULD BE PTCAEXG1.

5. EACH DATA FILE SHOULD CONTAIN ONLY TABLE ROW NUMBERS AND THE APPROPRIATE NUMBER OF DATA ITEMS PER ROW. DATA MUST BE DELIMITED BY EITHER A COMMA OR SPACE, E.G.:

   FILENAME PTCAEXG1 [FILE FOR PACIFIC BELL, TABLE SUM-1]
   100,12345,12356,12367
   110,10010,10021,10032

   ETC.

   - OR -

   100 12345 12356 12367
   110 10010 10021 10032

   ETC.

6. ANY DATA ITEM FOR WHICH NO VALID DATA EXISTS FOR A PARTICULAR FILING ENTITY SHOULD BE POPULATED WITH -99999. IF THE DATA ITEM IS A TRUE ZERO, THEN A 0 (ZERO) SHOULD BE ENTERED.

7. ANY NON-NUMERIC DATA MUST BE ENCLOSED IN QUOTATION MARKS. E.G. DATE FIELD IN EXHIBIT T1WS-3 MUST BE SHOWN AS "07/16/90".

STUDY AREA: _____ T1WS-1

RATE ADJUSTMENT ANALYSIS SUMMARY

	RATE CATEGORIES	CURRENT RATES (A)	RATE ADJUSTMENT FACTOR* (B)	RATES EFFECTIVE 1/1/91 (C)=A*B
	END USER**			
100	MULTI-LINE BUSINESS	_____	_____	_____
110	RES. & SNG. LN. BUS.	_____	N/A	_____
	TRAFFIC SENSITIVE			
	SWITCHING			
120	LS2	_____	_____	_____
130	LS1	_____	_____	_____
140	NON PREMIUM	_____	_____	_____
	LT TERMINATION			
150	PREMIUM	_____	_____	_____
160	NON-PREMIUM	_____	_____	_____
	LT FACILITY			
170	PREMIUM	_____	_____	_____
180	NON-PREMIUM	_____	_____	_____
190	TOTAL TRANSPORT***	N/A	_____	N/A
	INFORMATION			
200	PREMIUM	_____	_____	_____
210	NON-PREMIUM	_____	_____	_____
220	SPECIAL ACCESS****	N/A	_____	N/A

* SOURCE IS T1WS-2

** ROW 100 COLUMN A SHOULD REFLECT THE BFP REVENUE REQUIREMENT @ 12% / TEST PERIOD ACCESS LINES / 12. IF THE RESULT LISTED ON ROW 100 COLUMN C, IS LESS THAN $3.50, SINGLE LINE BUSINESS AND RESIDENTIAL RATES IN ROW 110 COLUMN C MUST BE FILED AT THAT LEVEL. IF THE RESULT ON ROW 100 COLUMN C IS GREATER THAN $6.00, THE MULTI-LINE END USER RATE IS CAPPED AT $6.00 AND THE SINGLE LINE RATE IS CAPPED AT $3.50.

*** TRANSPORT RATES FOR SOME COMPANIES ARE DEVELOPED ON MILEAGE BANDS RATHER THAN BROKEN INTO FACILITY AND TERMINATION CHARGES. IN THESE INSTANCES, ROWS 150 THRU 180 ARE NOT APPLICABLE AND THE RAF CONTAINED ON ROW 190 COLUMN B IS APPLICABLE TO ALL TRAFFIC SENSITIVE TRANSPORT RATES FILED.

**** THE RAF FACTOR FOR SPECIAL ACCESS IS APPLICABLE TO COMPANY SPECIFIC SPECIAL ACCESS RATES.

STUDY AREA: _____ T1WS-2

COST ANAYSIS SUMMARY

	COST CATEGORIES	REV REQ UNDERLYING CURRENT RATES* (A)	NONRECURRING AND ICB REVENUE IN COLUMN A*** (B)	RECURRING REVENUE REQUIREMENT (C)=A-B	EXOGENOUS COST CHANGES** (D)	RECURRING REV REQ ADJ FOR EXOGENOUS COST CHANGES (E)=C+D	RATE ADJUSTMENT FACTOR (F)=E/C
100	COMMON LINE						N/A
110	BFP						
120	ISW						N/A
130	PAY						N/A
140	SWITCHED TRAFFIC SENSITIVE						N/A
150	SWITCHING						
160	TRANSPORT						
170	INFORMATION						
180	SPECIAL ACCESS						
190	TOTAL ACCESS						N/A

* SOURCE IS T1WS-3 COLUMN D
** SOURCE IS T1WS-4 COLUMN D
*** REQUIRED FOR THOSE COMPANIES THAT ARE NOT APPLYING RAF FACTORS TO NON-RECURRING AND ICB RATES. COMPANIES APPLYING RAF FACTORS TO ALL RATES, INCLUDING NRC'S AND ICB'S, SHOULD COMPLETE COLUMN B WITH ZEROS.

STUDY AREA: _____ T1WS-3

DEVELOPMENT OF REVENUE REQUIREMENT UNDERLYING CURRENT RATES

	COST CATEGORIES	REV. REQ. UNDERLYING RATES IN EFFECT ON 7/1/90 (A)	DISALLOWANCE ADJUSTMENTS* (B)	EC SPECIFIC ADJUSTMENTS BY TRANSMIT.** (C)	REV. REQ. UNDERLYING CURRENT RATES*** (D)=A+B+C
100	COMMON LINE	_____	_____	_____	_____
110	BFP	_____	_____	_____	_____
120	ISW	_____	_____	_____	_____
130	PAY	_____	_____	_____	_____
140	SWITCHED TRAFFIC SENSITIVE	_____	_____	_____	_____
150	SWITCHING	_____	_____	_____	_____
160	TRANSPORT	_____	_____	_____	_____
170	INFORMATION	_____	_____	_____	_____
180	SPECIAL ACCESS	_____	_____	_____	_____
190	TOTAL ACCESS	_____	_____	_____	_____
200	TRANSMITTAL NUMBER****	N/A	N/A	_____	N/A
210	TRANSMITTAL DATE*****	N/A	N/A	_____	N/A

* REFLECT DISALLOWANCES MADE IN 7/2/90 AND 10/3/90 ORDERS
** IDENTIFY TRANSMITTAL ASSOCIATED WITH THIS VIEW
*** MUST AGREE WITH T1WS-2, COL A.
**** THE TRANSMITTAL NUMBER FOR COL B AND C SHOULD BE ENTERED ON ROW 200. ENTER NONE IF NO TRANSMITTALS WERE SUBMITTED.
***** THE TRANSMITTAL DATE FOR COL B AND C SHOULD BE ENTERED ON ROW 210. ENTER NONE IF NO TRANSMITTALS WERE SUBMITTED.

STUDY AREA: _____ T1WS-4

ROR REPRESCRIPTION
EXOGENOUS COST CHANGES

	COST CATEGORIES	RATEBASE AS ADJUST. FOR DISALLOW. (A)	ROR EFFECTS (B)=A*-.0075	TAX EFFECTS (C)SEE NOTE	TOTAL EXOGENOUS CHANGES (D)=B+C	TOTAL REV. REQ. AS ADJ. FOR DISALLOW. (E)
100	COMMON LINE					
110	BFP					
120	ISW					
130	PAY					
140	SWITCHED TRAFFIC SENSITIVE					
150	SWITCHING					
160	TRANSPORT					
170	INFORMATION					
180	SPECIAL ACCESS					
190	TOTAL ACCESS					

NOTE: COLUMN A IS THE RATEBASE UNDERLYING CURRENTLY EFFECTIVE RATES AS ADJUSTED FOR DISALLOWANCES (I.E. SPECIFIED IN 7/2/90 AND 10/3/90 FCC ORDERS)

COLUMN C REPRESENTS THE TAX EFFECTS OF THE DECREASE IN RETURN ASSOCIATED WITH COLUMN B. THE SPECIFIC TAX CONSEQUENCES WILL BE COMPANY SPECIFIC BASED ON APPLICABLE FEDERAL AND STATE TAX GROSS UP RATES.

COLUMN D IS THE TOTAL EFFECT OF THE ROR REPRESCRIPTION AND WILL BE USED TO DEVELOP THE RAF ON T1WS-2. T1WS-4 COLUMN D SHOULD EQUAL T1WS-2 COLUMN D.

COLUMN E IS THE REVENUE REQUIREMENTS UNDERLYING CURRENT RATES INCLUSIVE OF ANY DISALLOWANCES, BOTH RATEBASE (CONTAINED IN COLUMN A) AND EXPENSE ITEMS.

STUDY AREA: _____ TIWS-5

ANNUALIZED ACCESS
PRICE OUT COMPARISONS

		REVENUES AT CURRENT RATES (A)	REVENUES AT PROPOSED RATES (B)	CHANGE (C)=B-A
100	TOTAL MULTI-LINE BUSINESS (INCL. SPEC. ACC. SURCHARGE REV.)			
110	TOTAL RESIDENCE AND SINGLE-LINE BUSINESS			
120	TOTAL CCL*			
130	TOTAL TS SWITCHED (EXCL. DA)			
140	TOTAL SPECIAL ACCESS			
150	DIRECTORY ASSISTANCE			

NOTE: REVENUES ARE CALCULATED USING DEMAND UNDERLYING CURRENT RATES. THE DEMAND USED TO CALCULATE THE REVENUES IN COL'S A AND B SHOULD BE IDENTICAL.

COMPANIES THAT PARTICIPATE IN THE NECA EU POOL ARE NOT REQUIRED TO POPULATE ROW 100 AND ROW 110.

* POPULATED ONLY BY CARRIERS FILING THEIR OWN CCL RATES (NON-NECA POOLED)

STUDY AREA: _____ TIWS-6

CARRIER COMMON LINE RATE DEVELOPMENT

		DATA UNDERLYING CURRENT RATES (A)	DATA UNDERLYING PROPOSED RATES (B)	CHANGE (C)=B-A
100	TOTAL COMMON LINE REV. REQ.			
110	LTS + TRS			
120	END USER REVENUE (NOTE 1)			
130	SPECIAL ACCESS SURCHARGE REVENUE			
140	REV. REQ. FOR CARRIER COMMOM LINE (NOTE 2)			
150	ORIGINATING CCL RATEMAKING MOU (NOTE 3)			
160	REVENUE FROM ORIGINATING CCL (NOTE 4)			
170	REV. REQ. FOR TERMINATING CCL (NOTE 5)			
180	TERMINATING CCL RATEMAKING MOU (NOTE 3)			
190	PREMIUM TERMINATING CCL RATE (NOTE 6)			
200	NON PREMIUM TERMINATING CCL RATE (NOTE 7)			
210	TOTAL RATEMAKING MOU (NOTE 8)			
220	PREMIUM ORIG. AND TERM. CCL RATE (NOTE 9)			
230	NON-PREMIUM ORIG. AND TERM. CCL RATE (NOTE 10)			

NOTE 1 -- SOURCE IS TIWS-5, ROW 100 + ROW 110
NOTE 2 -- ROW 140 = ROW 100 + ROW 110 - ROW 120 - ROW 130
NOTE 3 -- RATEMAKING MOU = PREMIUM MOU + (.45 * NON PREMIUM MOU)
NOTE 4 -- ROW 160 = ROW 150 * 0.01
NOTE 5 -- ROW 170 = ROW 140 - ROW 160
NOTE 6 -- ROW 190 = ROW 170 / ROW 180
NOTE 7 -- ROW 200 = ROW 190 * .45
NOTE 8 -- ROW 210 = ROW 150 + ROW 180
NOTE 9 -- ROW 220 = ROW 140 / ROW 210
NOTE 10-- ROW 230 = ROW 220 * .45

T2WS-1

STUDY AREA: _____

RATE ADJUSTMENT ANALYSIS SUMMARY

	RATE CATEGORIES	CURRENT RATES (A)	RATE ADJUSTMENT FACTOR* (B)	RATES EFFECTIVE 1/1/91 (C)=A*B
	END USER**			
100	MULTI-LINE BUSINESS	_____	_____	_____
110	RES. & SNG. LN. BUS.	_____	N/A	_____
	TRAFFIC SENSITIVE			
	SWITCHING			
120	LS2	_____	_____	_____
130	LS1	_____	_____	_____
140	NON PREMIUM	_____	_____	_____
	LT TERMINATION			
150	PREMIUM	_____	_____	_____
160	NON-PREMIUM	_____	_____	_____
	LT FACILITY			
170	PREMIUM	_____	_____	_____
180	NON-PREMIUM	_____	_____	_____
190	TOTAL TRANSPORT***	N/A	_____	N/A
	INFORMATION			
200	PREMIUM	_____	_____	_____
210	NON-PREMIUM	_____	_____	_____
220	SPECIAL ACCESS****	N/A	_____	N/A

* SOURCE IS T2WS-2

** ROW 100 COLUMN A SHOULD REFLECT THE BFP REVENUE REQUIREMENT @ 12% / TEST PERIOD ACCESS LINES / 12. IF THE RESULT LISTED ON ROW 100 COLUMN C, IS LESS THAN $3.50, SINGLE LINE BUSINESS AND RESIDENTIAL RATES IN ROW 110 COLUMN C MUST BE FILED AT THAT LEVEL. IF THE RESULT ON ROW 100 COLUMN C IS GREATER THAN $6.00, THE MULTI-LINE END USER RATE IS CAPPED AT $6.00 AND THE SINGLE LINE RATE IS CAPPED AT $3.50

*** TRANSPORT RATES FOR SOME COMPANIES ARE DEVELOPED ON MILEAGE BANDS RATHER THAN BROKEN INTO FACILITY AND TERMINATION CHARGES. IN THESE INSTANCES, ROWS 150 THRU 180 ARE NOT APPLICABLE AND THE RAF CONTAINED ON ROW 190 COLUMN B IS APPLICABLE TO ALL TRAFFIC SENSITIVE TRANSPORT RATES FILED.

**** THE RAF FACTOR FOR SPECIAL ACCESS IS APPLICABLE TO COMPANY SPECIFIC SPECIAL ACCESS RATES.

STUDY AREA: _____ T2WS-2

COST ANAYSIS SUMMARY

	COST CATEGORIES	REV REQ UNDERLYING CURRENT RATES* (A)	NONRECURRING AND ICB REVENUE IN COLUMN A*** (B)	RECURRING REVENUE REQUIREMENT (C)=A-B	EXOGENOUS COST CHANGES** (D)	RECURRING REV REQ ADJ FOR EXOGENOUS COST CHANGES (E)=C+D	RATE ADJUSTMENT FACTOR (F)=E/C
100	COMMON LINE						N/A
110	BFP						
120	ISW						N/A
130	PAY						N/A
140	SWITCHED TRAFFIC SENSITIVE						N/A
150	SWITCHING						
160	TRANSPORT						
170	INFORMATION						
180	SPECIAL ACCESS						
190	TOTAL ACCESS						N/A

* SOURCE IS T2WS-3 COLUMN D
** SOURCE IS T2WS-4 COLUMN C
*** REQUIRED FOR THOSE COMPANIES THAT ARE NOT APPLYING RAF FACTORS TO NON-RECURRING AND ICB RATES. COMPANIES APPLYING RAF FACTORS TO ALL RATES, INCLUDING NRC'S AND ICB'S, SHOULD COMPLETE COLUMN B WITH ZEROS.

STUDY AREA: _____ T2WS-3

DEVELOPMENT OF REVENUE REQUIREMENT UNDERLYING CURRENT RATES

	COST CATEGORIES	REV. REQ. UNDERLYING RATES IN EFFECT ON 7/1/90 (A)	EC SPECIFIC ADJUSTMENTS BY TRANSMIT.* (B)	EC SPECIFIC ADJUSTMENTS BY TRANSMIT.* (C)	REV. REQ. UNDERLYING CURRENT RATES** (D)=A+B+C
100	COMMON LINE				
110	BFP				
120	ISW				
130	PAY				
140	SWITCHED TRAFFIC SENSITIVE				
150	SWITCHING				
160	TRANSPORT				
170	INFORMATION				
180	SPECIAL ACCESS				
190	TOTAL ACCESS				
200	TRANSMITTAL NUMBER***	N/A			N/A
210	TRANSMITTAL DATE****	N/A			N/A

* IDENTIFY TRANSMITTAL ASSOCIATED WITH THIS VIEW
** MUST AGREE WITH T2WS-2, COL A.
*** THE TRANSMITTAL NUMBER FOR COL B AND C SHOULD BE ENTERED ON ROW 200. ENTER NONE IF NO TRANSMITTALS WERE SUBMITTED.
**** THE TRANSMITTAL DATE FOR COL B AND C SHOULD BE ENTERED ON ROW 210. ENTER NONE IF NO TRANSMITTALS WERE SUBMITTED.

STUDY AREA: _____ T2WS-4

		EXOGENOUS COST CHANGES		
	COST CATEGORIES	REV. REQ. UNDERLYING CURRENT RATES	REV. REQ. IN (A) RESTATED WITH 11.25% ROR	EXOGENOUS COST CHANGES
		(A)	(B)	(C)=B-A
100	COMMON LINE			
110	BFP			
120	ISW			
130	PAY			
140	SWITCHED TRAFFIC SENSITIVE			
150	SWITCHING			
160	TRANSPORT			
170	INFORMATION			
18C	SPECIAL ACCESS			
19C	TOTAL ACCESS			

T2WS-5

STUDY AREA: _____

ANNUALIZED ACCESS
PRICE OUT COMPARISONS

		REVENUES AT CURRENT RATES (A)	REVENUES AT PROPOSED RATES (B)	CHANGE (C)=B-A
100	TOTAL MULTI-LINE BUSINESS (INCL. SPEC. ACC. SURCHARGE REV.)			
110	TOTAL RESIDENCE AND SINGLE-LINE BUSINESS			
120	TOTAL CCL	N/A	N/A	N/A
130	TOTAL TS SWITCHED (EXCL. DA)			
140	TOTAL SPECIAL ACCESS			
150	DIRECTORY ASSISTANCE			

NOTE: REVENUES ARE CALCULATED USING DEMAND UNDERLYING CURRENT RATES. THE DEMAND USED TO CALCULATE THE REVENUES IN COL'S A AND B SHOULD BE IDENTICAL.

COMPANIES THAT PARTICPATE IN THE NECA EU POOL ARE NOT REQUIRED TO POPULATE ROW 100 AND 110.

STUDY AREA: _____ T2WS-ML

MULTI-LINE END USER RATE
FLOW THROUGH OF ROR REPRESCRIPTION

100	BFP REVENUE REQUIREMENT UNDERLYING CURRENT RATES	_____
110	BFP REVENUE REQUIREMENT IN ROW 100 RECAST AT 11.25% ROR	_____
120	END USER RATE ADJUSTMENT FACTOR (ROW 110/ROW 100)	_____
130	CURRENT MULTI-LINE BUSINESS END USER RATE	_____
140	1/1/91 MULTI-LINE BUSINESS END USER RATE (ROW 120 * ROW 130) SEE NOTE	_____

NOTE: IF THE RESULT LISTED ON ROW 140 IS LESS THAN $3.50, SINGLE LINE BUSINESS AND RESIDENTIAL RATES MUST BE FILED AT THAT LEVEL. IF THE RESULTS ON ROW 140 ARE GREATER THAN $6.00, THE MULTI-LINE END USER RATE IS CAPPED AT $6.00 AND THE SINGLE LINE RATE IS CAPPED AT $3.50.

[FR Doc. 90-25512 Filed 10-25-90; 8:45 am]
BILLING CODE 6712-01-C

FEDERAL MEDIATION AND CONCILIATION SERVICE

Agency Information Collection Activity Under Review by the Office of Management and Budget

ACTION: Notice: Form R–43 Submitted for review to the Office of Management and Budget.

The Federal Mediation and Conciliation Service (FMCS) has submitted to the Office of Management and Budget (OMB) a request for review of FMCS Form R–43, Request for Arbitration Panel. The request seeks OMB approval to extend the expiration date of Form R–43 from September 30, 1990 to March 30, 1991. The request was submitted pursuant to the Paperwork Reduction Act (44 U.S.C. chapter 35).

Form R–43 is employed by FMCS in order to allow employers and labor organizations to request lists of arbitrators. In most instances a list of seven arbitrators is furnished in response to the submission of a Form R–43. The employer and the labor organization then strike names from the list until they decide, by a process of elimination, on the person who will serve as their arbitrator.

There are approximately 1,600 persons on the FMCS roster of arbitrators. These persons are not employees of the Federal Government, but rather are economists, university professors and other individuals who are professinal arbitrators.

The information furnished on Form R–43 consists generally of the name, address and phone number of the employer, the same information for the labor organization, the location and nature of the dispute, the type of industry involved, any special requirements, and signatures.

The submission of Form R–43 for OMB review is for the purpose of continuing this Form, pending FMCS consideration of changes to the Form and to FMCS arbitration regulations. Additional information pertaining to this Form is as follows:

Agency: Federal Mediation and Conciliation Service

Title: Request for Arbitration Panel.

Form Number: Agency Form R–43; OMB No. 3076–0002.

Type of Request: Extension of expiration date of a currently approved collection without any change in the substance or in the method of collection.

Authority: 29 U.S.C. 171(b) and 29 CFR Part 1404.

Burden: Approximately 27,000 respondents and 4,500 reporting hours per year. Generally, a Form R–43 is filled out only once and the time needed to fill out the Form is about 10 minutes or less.

Needs and Uses: The need for this Form is to obtain information—name, address, phone number, location, type of dispute, type of industry and special requirements—so that this information may be used to respond to requests for list of arbitrators.

Affected Public: Employers and labor organizations.

Frequency: On occasion, as needed by the parties.

Respondents Obligation: Voluntary.

Comments regarding the burden estimate given above, or any other aspect of this information collection, including suggestions for reducing the burden, should be sent to: Diana Rowen, OMB Desk Officer, 725 17th Street, NW., Room 3001, Washington, DC 20503, (202) 395–6880 and Ted M. Chaskelson, General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW. 20427 (202) 653–5305.

Dated: October 22, 1990.

Bernard E. DeLury,

Director.

[FR Doc. 90–25342 Filed 10–25–90; 8:45 am]

BILLING CODE 6372–01–M

FEDERAL RESERVE SYSTEM

Caisse Nationale de Credit Agricole, S.A.; Acquisition of Company Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a previous **Federal Register** Notice (FR Doc. 90–21977) published as page 38390 of the issue for Tuesday, September 18, 1990.

Under the Federal Reserve Bank of Chicago, the entry for Caisse Nationale de Credit Agricole, S.A., is amended to read as follows:

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Caisse Nationale de Credit Agricole, S.A., Paris, France; the acquire 49.9 percent of the voting shares of Locasuez America, Inc., New York, New York, and thereby engage in making and servicing loans, investment or financial advisory activities, and leasing activities pursuant to §§ 225.25(b) (1), (4) and (5) of the Board's Regulation Y.

Comments on this application must be received by November 9, 1990.

Board of Governors of the Federal Reserve System, October 22, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–25362 Filed 10–25–90; 8:45 am]

BILLING CODE 6210–01–M

Kennon Ray Patterson, Sr., et al., Change in Bank Control Notice, Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than November 13, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Kennon Ray Patterson, Sr., Bishop Kenner Walker, Jr., and Dicey Strickland Childers, as trustees for the Community Bancshares, Inc. Employee Stock Ownership Plan, all of Blountsville, Alabama; to acquire an additional 5.37 percent (totalling 13.42 percent) of the voting shares of Community Bancshares, Inc., Blountsville, Alabama, and thereby indirectly acquire Community Bank, Blountsville, Alabama.

Board of Governors of the Federal Reserve System, October 22, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–25361 Filed 10–25–90; 8:45 am]

BILLING CODE 6210–01–M

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Office of Acquisition Policy (VP), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to approve a new information collection, Placement of Orders. This information is used by GSA contractors in the Stock and Special Order Program and the Schedule Program who want to be able

to accept orders through Electronic Data Interchange (EDI) as an alternative to oral or paper delivery orders.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street, NW., Washington, DC 20405.

Annual Reporting Burden

Participation in this alternative method of receiving delivery orders under a contract is voluntary and GSA has no basis for calculating the number of contractors that have capability to receive delivery orders through EDI. Unless a contractor is currently using EDI in its private business transactions, it will not participate. Since the procedures and guidelines established in the Trading Partner Agreement (TPA) authorized in this regulation will be what it prudently required under private sector transactions, there will be no additional burden imposed by this collection.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, (202) 501–1224.

Copy of Proposal

May be obtained from the Information Collection Management Branch (CAIR), Room 7102, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: October 16, 1990.

Emily Karam,

Director, Information Management Division.

[FR Doc. 90–25302 Filed 10–25–90; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSR—30]

Availability of Medical Waste Tracking Act Report

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice announces the availability of the ATSDR Medical Waste Tracking Act Report, "The Public Health Implications of Medical Waste: A Report to Congress."

The Medical Waste Tracking Act of 1988 (Pub. L. 100–582) (42 U.S.C. 6992) amended the Solid Waste Disposal Act and mandated that within 24 months after enactment (November 1, 1990) the Administrator of ATSDR shall prepare for Congress a report on the health effects of medical waste.

AVAILABILITY: This notice is to announce that the ATSDR Medical Waste Tracking Act Report, "The Public Health Implications of Medical Waste: A Report to Congress" (NTIS Document Number PB 91–100271), is now available by mail from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22151, telephone (703) 487–4650.

FOR FURTHER INFORMATION CONTACT: Maureen Y. Lichtveld, M.D., M.P.H., Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, Mail Stop E–32, Atlanta, Georgia 30333, (404) 639–0610, FTS 236–0610.

SUPPLEMENTARY INFORMATION: On November 1, 1988, the President signed the Medical Tracking Act of 1988 (Pub. L. 100–582), which amended the Solid Waste Disposal Act. Section 11009 of the Medical Waste Tracking Act states (42 U.S.C. 6992h):

> Within 24 months after the enactment of this section (November 1, 1988), the Administrator of ATSDR shall prepare for Congress a report on the health effects of medical waste, including each of the following:
>
> (1) A description of the potential for infection or injury from the segregation, handling, storage, treatment, or disposal of medical wastes.
>
> (2) An estimate of the number of people injured or infected annually by sharps, and the nature and seriousness of those injuries or infections.
>
> (3) An estimate of the number of people infected annually by other means related to waste segregation, handling, storage, treatment, or disposal, and the nature and seriousness of those infections.
>
> (4) For diseases possibly spread by medical waste, including Acquired Immune Deficiency Syndrome and hepatitis B, an estimate of what percentage of the total number of cases nationally may be traceable to medical wastes.

Medical waste is defined by the Medical Waste Tracking Act as any solid waste (solid, liquid, or gaseous phase) that is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals. Medical waste does not include any hazardous waste identified or listed under subtitle C of the Solid Waste Disposal Act or household waste as defined in regulations under subtitle C (42 U.S.C. 6903 (40)).

This notice announces the availability of the final Report. The Report has undergone extensive internal review, has been subjected to scientific and technical peer review by experts both within and outside the federal government, and was available for Public Comment from January 31, 1990 through April 2, 1990 (55 FR 12, page 1770). On the basis of the comments received, the Report was finalized and submitted to Congress on September 28, 1990, as required by the Medical Waste Tracking Act of 1988.

Dated: October 18, 1990.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 90–25365 Filed 10–25–90; 8:45 am]

BILLING CODE 4160–70–M

Alcohol, Drug Abuse, and Mental Health Administration

Partial Suspension of a Laboratory Which No Longer Meets Minimum Standards To Engage in Confirmatory Urine Drug Testing for Amphetamines

AGENCY: National Institute on Drug Abuse, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services routinely publishes in the **Federal Register** a list of laboratories certified to meet standards of subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979–11986) dated April 11, 1988. This notice informs the public that, effective October 22, 1990, the following laboratory's certification is partially suspended under section 3.14 of the Guidelines:

Roche Biomedical Laboratories, 1912 Alexander Drive, P.O. Box 13973, Research Triangle Park, NC 27709; Telephone (919)–361–7770.

The certification of the above named laboratory is suspended from conducting confirmatory testing of amphetamines. Under the terms of the suspension, the laboratory is required to send a portion of each urine specimen that it determines by initial testing to be positive for amphetamines to another HHS/NIDA certified laboratory for independent testing of the specimen for amphetamines. The result determined by this independent testing will be the result reported.

The laboratory named above continues to meet all requirements for HHS/NIDA certification for testing urine specimens for marijuana, cocaine, opiates and phencyclidine.

FOR FURTHER INFORMATION CONTACT:
Mona W. Brown, Press Officer, National Institute on Drug Abuse, room 9–A–54, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301)–443–6245.

Charles R. Schuster,

Director, National Institute on Drug Abuse.

[FR Doc. 90–25548 Filed 10–25–90; 8:45 am]

BILLING CODE 4160–20–M

National Institutes of Health

National Institute on Aging; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the National Institute on Aging.

These meetings will be open to the public to discuss administrative details and other issues relating to committee activities as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion, and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, National Institute on Aging, Building 31, room 5C05, National Institutes of Health, Bethesda, Maryland, 20892, (301/496–9322), will provide summaries of the meetings and rosters of the committee members upon request.

Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Subcommittee: Biological and Clinical Aging Review Subcommittee B.

Executive Secretary: Dr. James Harwood, Building 31, room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496–9666.

Dates of Meeting: October 29–30, 1990.

Place of Meeting: Building 31, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20892.

Open: October 29—7:30 p.m. to recess.

Closed: October 30—8:30 a.m. to adjournment.

Name of Subcommittee: Biological and Clinical Aging Review Subcommittee A.

Executive Secretary: Dr. Daniel Eskanizi, Building 31, room 5C12, National Institutes of Health, Bethesda, Maryland 20892, Phone: 301/496–9666.

Dates of Meeting: November 7–9, 1990.

Place of Meeting: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Open: November 7—7:30 p.m. to recess.

Closed: November 8–9—8:30 a.m. to adjournment.

Dates of Meeting: November 27–30, 1990.

Place of Meeting: Hyatt Regency Hotel, Bethesda, Maryland.

Open: November 27—7:30 to recess.

Closed: November 28–30—8:30 a.m. to adjournment.

Name of Committee: Neuroscience, Behavior and Sociology of Aging Review, Subcommittee B Meeting.

Executive Secretary: Dr. Walter Spieth, Building 31, room 5C12, National Institutes of Health, Bethesda, Maryland 20892.

Dates of Meeting: November 27–30, 1990.

Place of Meeting: Hyatt Regency Hotel, Bethesda, Maryland.

Open: November 27—7:30 p.m. to recess.

Closed: November 28–30—8:30 a.m. to adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: October 15, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–25320 Filed 10–25–90; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meeting of Basic Sciences I Subcommittee of Acquired Immunodeficiency Syndrome Research Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Basic Sciences I Subcommittee of the Acquired Immunodeficiency Syndrome Research Review Committee, National Institute of Allergy and Infectious Diseases, on November 16, 1990, at the Chevy Chase Holiday Inn, Palladian Center Room, 5520 Wisconsin Avenue, Bethesda, Maryland 20815.

The meeting will be open to the public from 8:30 a.m. to 9 a.m. on November 16 to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9 a.m. until adjournment on November 16. These applications, proposals, and the discussions could reveal confidential trade secrets or commerical property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Patricia Randall, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301–496–5717), will provide a summary of the meeting and a roster of the committee members upon request.

Dr. Sherry L. Dupere, Executive Secretary, Basic Sciences I Subcommittee, of the Acquired Immunodeficiency Syndrome Research Review Committee, NIAID, NIH, Westwood Building, room 3A11, Bethesda, Maryland 20892, telephone (301–496–7042), will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health)

Dated: October 15, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90–25231 Filed 10–25–90; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Dental Research; Meeting of NIDR Special Grants Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Special Grants Review Committee, National Institute of Dental Research, November 13–14, 1990, in the American Inn of Bethesda, 8130 Wisconsin Avenue, Bethesda, Maryland 20814. The Committee will meet in the Canterbury Room. The meeting will be open to the public from 8:30 to 9 a.m. on November 13 for general discussions. Attendance by the public is limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on November 13, from 9

a.m. to recess and on November 14, from 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Ethel B. Jackson, Executive Secretary, NIDR Special Grants Review Committee, NIH, Westwood Building, room 519, Bethesda, MD 20892, (telephone 301/496-7658) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13-122—Disorders of Structure, Function, and Behavior: Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13-845—Dental Research Institute; National Institute of Health)

Dated: October 15, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-25322 Filed 10-25-90; 8:45 am]

BILLING CODE 4140-01-M

National Center for Nursing Research; Meeting of the Nursing Science Review Committee

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Nursing Science Review Committee, National Center for Nursing Research, November 14-16, 1990, Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on November 14 from 9 a.m. to 10 a.m. Agenda items to be discussed include the report of the director.

Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and section 10(d)) of Public Law 92-463, the meeting will be closed to the public on November 14 at approximately 10 a.m. to adjournment on November 16 for completion of the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. John Chah, Executive Secretary, Nursing Science Review Committee, National Institutes of Health, Building 31, room 5B19, Bethesda, Maryland 20892, (301) 496-0472, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: October 15, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-25323 Filed 10-25-90; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-1917; FR-2606-N-95]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: October 26, 1990.

ADDRESSES: For further information, contact James Forsberg, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: October 18, 1990.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 90-25181 Filed 10-25-90; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Government of the Trust Territory of the Pacific Islands

Notice is hereby given that the Secretary of the Interior has issued Order Number 3142 dated October 15, 1990. The Order provides for maximum self-government within the Trust Territory, by continuing to define the extent and nature of the authority of the government of Palau in such Trust Territory, consistent with the authority and responsibilities delegated to the Secretary of the Interior, under Executive order 11021. The Order continues to delegate to the Assistant Secretary, Territorial and International Affairs, the authority of the Secretary of the Interior pursuant to administration of the Trust Territory.

The Order is published in its entirety below.

Additional information regarding the Order may be obtained from Larry L. Morgan, Director, Legislative and Public Affairs, Office of Territorial and International Affairs, U.S. Department of the Interior, 1849 C Street NW., Washington, DC 20240. Telephone number 202-208-4754.

Dated: October 16, 1990.

Stella Guerra,

Assistant Secretary of the Interior.

Order No. 3142

Subject: Government in the Trust Territory of the Pacific Islands

Section 1. *Purpose.* The purpose of this order is: (a) To further promote education, health care, economic development, and public safety in Palau as responsibilities of the United States under the 1947 Trusteeship Agreement with the United Nations Security Council, (b) to continue to the traditions of constitutional self-government in Palau, and (c) to strengthen the close relations of the Department of the Interior and Palau.

This order provides for maximum self-government within the Trust Territory of the Pacific Islands by continuing to define the extent and nature of the authority of government in such Trust Territory, consistent with the authority and responsibilities delegated to the

Secretary of the Interior under Executive Order 11021. Until the future political status of Palau is determined, the United States will continue to discharge its responsibilities as Administering Authority under the Trusteeship Agreement.

Section 2. *Delegation of authority.* The authority of the Secretary of the Interior, with respect to the Trust Territory of the Pacific Islands derived from the President, the Congress, and the Trusteeship Agreement, continues to be delegated to the Assistant Secretary of the Interior for Territorial and International Affairs (hereinafter referred to as "Assistant Secretary"). The Assistant Secretary shall exercise this authority to the extent necessary to ensure that the obligations and responsibilities of the United States under the Trusteeship Agreement are met and that the actions of the government of Palau are consistent with the provisions of the Trusteeship Agreement, this order, and treaties, laws, regulations, and agreements applicable in the Trust Territory of the Pacific Islands. The Assistant Secretary shall consult annually with Palau's President and the presiding officers of its national legislature regarding this order.

Section 3. *Government of the Trust Territory of the Pacific Islands.* The executive, legislative, and judicial functions of the Government of the Trust Territory of the Pacific Islands shall remain delegated to the constitutional government of Palau, subject to the authority of the Assistant Secretary under the Trusteeship Agreement, this order, and treaties, laws, and regulations of the United States applicable in the Trust Territory of the Pacific Islands.

Section. 4. *Interior representative and staffing.* The Assistant Secretary shall appoint a well-qualified and experienced representative to be stationed in Palau who will serve as a liaison between the government of Palau and the Assistant Secretary. In addition, the Assistant Secretary may appoint such professional, technical, and administrative staff (including emergency law enforcement personnel) as may be necessary to carry out official duties and responsibilities under the Trusteeship Agreement. The Assistant Secretary may assist the government of Palau in locating a special prosecutor and a public auditor, as needed, and in the event of a vacancy may appoint a special prosecutor or public auditor, as the case may be, on an interim basis. To the extent authorized by Federal law, the Assistant Secretary may request the assistance of other Federal agencies in meeting responsibilities of the United States, including utilization of Federal law enforcement personnel for the full range of law enforcement responsibilities.

Section 5. *Financial assistance.* The Department of the Interior shall provide annual financial assistance to Palau in such amounts as may be appropriated by the Congress. The Government of Palau shall be invited to participate in the process by submitting an annual budget request to the Assistant Secretary. Such budget request shall detail the amount of assistance needed, the proposed distribution of Federal assistance in accordance with Palau's structure of accounts and the anticipated amounts and distribution of local revenues that are being augmented by this assistance. Upon congressional appropriation, the Assistant Secretary shall issue grants to Palau, which specify the purposes and conditions of the assistance in accordance with Trusteeship responsibilities (including education, health care, economic development, and public safety), congressional directives, and applicable Federal law and regulations. In the grant document, the government of Palau will be given some authority to reprogram administratively. Unless otherwise authorized in a grant or reprogramming, Federal funds may be used only to satisfy obligations incurred for the particular year for which such funds were appropriated or granted, or, in exceptional circumstances, for a subsequent year. Payments made to satisfy obligations of the government of Palau from past years shall be paid out of local Palau funds.

Section 6. *Environmental protection and planning.* In order to protect the exceptional and delicate environment of the Rock Islands and properly for development throughout Palau, a master national development plan shall be developed that is applicable to all of Palau and approved in public law by the government of Palau. Until approval and implementation of such plan, the natural environment of the Rock Islands shall be preserved through a process whereby construction on any rock island in Palau is allowed only after approval on an individual project basis in public law by the government of Palau. Rock Island is defined here as an island of Palau, any part of which lies in the area between the southern-most point of Koror Island and the northern-most point of Peleliu.

According to mutual agreement with the President of Palau regarding steps in the process for development the master plan, including related legislation and times for approval, the Assistant Secretary may offer assistance for developing such a plan, but only if such agreement contains provisions guaranteeing that the plan and related legislation shall be approved in Palau within a reasonable amount of time after the views of Palau authorities have been incorporated and the plan completed.

Section 7. *Borrowing.* The Assistant Secretary shall consult with representatives of the government of Palau regarding amortization of Palau's existing and potential long-term debt.

No government in Palau may borrow funds, except as authorized by the Constitution of Palau. Such borrowing may occur only upon approval of the specific debt in public law by the initiating government and the government of Palau. Any debt instrument or series of related debt instruments in an amount of $250,000 or more shall be submitted to the Assistant Secretary, in advance of receipt of any funds, together with information showing (a) The amount, terms, and conditions of the borrowing; (b) its purpose; (c) the source of funds earmarked for repayment; and (d) the total debt outstanding by the initiating government.

The Assistant Secretary shall disapprove any loan, or curtail or proscribe any borrowing, if analysis reveals that the total amount of outstanding debt is beyond the ability of the borrower to repay or if the requirements of this section for providing information are not fulfilled.

Section 8. *Auditing and accounting.* The Assistant Secretary shall assist Palau in complying with proper accounting principles, internal controls, and audit recommendations, and shall resolve all questions involving Department of the Interior grants.

Section 9. *Grant-in-aid programs.* The President of Palau shall designate an official within the executive branch of the government of Palau whose primary responsibility shall be to coordinate applications for grant-in-aid assistance and to monitor compliance with conditions of such assistance. Such official shall inform the representative regarding applications for, and the status of, grants-in-aid for Palau. The representative shall assist Palau with Federal program participation and requirements.

Section 10. *Relations with other United States Government agencies.* The Assistant Secretary shall assist Palau with regard to its participation in Federal programs. In order to facilitate such assistance, the government of

Palau shall concurrently provide the Assistant Secretary with copies of written communications of the government of a Palau with agencies of the United States, except in those specific cases in which a different procedure is agreed to by the Assistant Secretary.

Section 11. *Relations with Foreign Governments and International Organizations.* During the period of trusteeship, the United States remains responsible for the international relations of Palau. In conducting such relations, the United States will continue to fulfill all of its obligations under the Trusteeship Agreement, particularly its responsibility to foster the development of Palau's economic, political and social institutions.

Official communications and relations by the government of Palau with foreign governments or international organizations (with the exception of the United Nations Trusteeship Council), whether undertaken in Palau or elsewhere, shall occur only with the approval of the Department of State. The Government of Palau shall submit plans for relations with foreign governments and international organizations to the Assistant Secretary, who shall submit them to the Department of State for approval. Using the same channel, the government of Palau shall (a) Obtain Department of State concurrence with any communication that the government of Palau proposes to send to a foreign government or international organization, and (b) provide the Department of State with a copy of incoming communications from or a report on conversations with officials of foreign governments or international organizations. The provisions of the Trusteeship Agreement and the rules of procedure of the Trusteeship Council shall continue to govern Palau's relationship with the Council. The requirements of this section apply to all officials of all governments in Palau, and their representatives.

Section 12. *Capital projects, other contracts and proprietary interests.* The Assistant Secretary shall review requests for capital improvement projects, which must conform to the Palau master national development plan when such plan becomes effective, and the Assistant Secretary shall consult the government of Palau with respect to the priorities and financing of such projects, including private financing. No government in Palau (national, state, or local) may contract, in a single contract or series of related contracts, in an amount of $250,000 or more, or hold any proprietary interest in a business endeavor unless such contract or interest, along with necessary information, has been submitted to the Assistant Secretary for review and has received a statement of no objection from the Assistant Secretary. Such statement shall not constitute an endorsement of a project, contract or endeavor by the United States. Other information that may be requested may include (1) A copy of the applicable Palau law authorizing the project or endeavor, or an opinion of the Palau Attorney General as to its legality; (2) an identification of funds required for the project and their sources; (3) the identity and financial standing of the contractors or parties; (4) documentation regarding the procurement procedures that will be used in awarding the contract; (5) a showing that the project or endeavor complies with land alienation provisions applicable in Palau; (6) an identification of the laws or regulations of the United States, if any, that apply to the project or endeavor; and (7) if necessary, an independent feasibility study. If necessary, the Assistant Secretary may provide technical assistance to aid in meeting the information requirements.

Any contract or endeavor that is not submitted for review or that has not received from the Assistant Secretary a statement of no objection is subject to suspension of construction, at the discretion of the Assistant Secretary, with the government in Palau that ordered the commencement of construction liable for the termination.

Section 13. *Telecommunications.* The Assistant Secretary shall take such steps as may be deemed necessary to insure that telecommunications within Palau are operated in compliance with treaties, laws, and regulations of the United States applicable to the Trust Territory of the Pacific Islands.

Section 14. *Legislation.* In order to achieve greater cooperation with regard to legislation, early communication is essential. Therefore, upon request of the appropriate committee chairman of a legislative body in Palau, the Interior representative shall provide comment, informally or in writing, on legislation under consideration by such legislative body.

Every newly enacted national law in Palau, and every newly enacted state law in Palau that involves finance or the expenditure of funds, shall be submitted by the President of Palau to the Assistant Secretary through the representative within ten (10) days after gaining legislative passage and any other approvals (except the approval of the Assistant Secretary) necessary for such law to become effective within the jurisdiction of the enacting government. Appropriations legislation shall be accompanied by a funds availability analysis from the affected legislative body (agreed to by the affected executive branch) that shows funds to be available, or such legislation itself must provide acceptable sources of funding that cover the entire life of the activity set forth therein.

The Assistant Secretary may suspend such law, or any part thereof, no later than twenty (20) days after receipt of such law by the representative by notifying the President of Palau of the action and the reasons therefor. The Assistant Secretary shall exercise this suspension power only if such law, or part thereof, is inconsistent with the provisions of this order, the Trusteeship Agreement, or with treaties, laws, or regulations of the United States applicable to the Trust Territory of the Pacific Islands.

A decision of the Assistant Secretary to suspend legislation shall become final within thirty days after receipt of notice, unless appealed to the Secretary of the Interior by the President of Palau, on his own behalf or on behalf of another government in Palau. A decision of the Assistant Secretary to suspend legislation that has been timely appealed to the Secretary shall remain in effect until the Secretary provides otherwise. If the suspended legislation was enacted by means of a legislative override of a veto, the President of Palau shall transmit to the Secretary, in timely fashion, any appeal of the affected legislative body, including all related documentation forwarded by such legislative body.

No law shall take effect until the period during which the Assistant Secretary may suspend the law has expired, unless the Assistant Secretary earlier notifies the President of Palau that the authority to suspend the law will not be exercised. Any suspended law shall be null and of no effect unless the Assistant Secretary specifies otherwise in the notification of suspension.

Section 15. *Judicial.* a. The Appellate Division of the High Court of the Trust Territory of the Pacific Islands shall have jurisdiction to review, by *writ of certiorari,* the final decisions of the highest court of Palau in which a decision may be had, that are rendered after January 14, 1988. The rulings of the courts of Palau shall be conclusive on questions of the local law of Palau, except in cases in which the Government of the Trust Territory of the Pacific Islands, the Government of the

United States, its subdivisions and agencies, or its military or civilian personnel are parties. Decisions of the High Court of the Trust Territory of the Pacific Islands shall be final, binding and enforceable according to their terms.

b. The judicial functions provided for in the Occupational Safety and Health Act of 1970 [Pub. L. 91–596; 84 Stat. 1590) relating to Palau shall be performed by the appropriate division of the High Court of the Trust Territory of the Pacific Islands.

Section 16. *Effective date.* This order shall become effective upon signature and may be incorporated in the Manual of the Department of the Interior.

Section 17. *Prior orders.* Secretary's Orders No. 2918 and No. 3119, as amended, are superseded by this order.

Dated: October 15, 1990.

[FR Doc. 90–25305 Filed 10–25–90; 8:45 am]
BILLING CODE 4310–93–M

Bureau of Land Management

[NV–930–91–4320–13]

Las Vegas District Grazing Advisory, Board Meeting; NV.

Notice is hereby given in accordance with Public Law 92–463 that a meetig of the Las Vegas District Grazing Advisory Board will be held Thursday, November 15, 1990. The meeting will begin at 8 a.m., in the conference room of the VFW, Hall, corner of Dixon and Poplar Streets, Caliente, Nevada, and continue until 5 p.m.

The agenda is as follows:

1. Welcome and introductions.
2. Election of Chairperson and Vice Chairperson.
3. Range Improvement program, statuts update, and proposals.
4. Allotment management plans, evaluations, decisions, and agreements.
5. Terms and conditions for livestock grazing on Desert Tortoise habitat.
6. Public comments.
7. Arrangements for next meeting.

The meeting is open to the public. Interested persons may make oral comments to the Board during the public comment period on the day of the meeting or they may file written statements for the Board's consideration during the meeting. Notify the District Manager, BLM, 4765 West Vegas Drive, P.O. Box 26569, Las Vegas, Nevada 89126, if you wish to make an oral statement to the Board. Summary minutes of the Board meeting will be maintained at the Las Vegas District Office. The minutes will be available for public inspection during regular office hours (7:30 a.m. to 4:15 p.m.) within 30 days after the meeting.

Dated: October 18, 1990

Ben F. Collins,
District Manager, Las Vegas.

[FR Doc. 90–25300 Filed 10–25–90; 8:45 am]
BILLING CODE 4310–HC–M

[AZ–050–0–4333–13]

Interim Route Designation and Closure of Route H–001, in Mohave County, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Interim route designation of route HE–001 on Crossman Peak in Mohave County, Arizona. Interim designation to remain in effect until final designation during the update of the Yuma District Resource Management Plan in 1992.

SUMMARY: The Yuma District Manager announced the interim designation of route HE–001 as closed to vehicle use. This action is being taken to provide for public safety, reduce disturbance to critical desert bighorn sheep habitat, and prevent unnecessary environmental degradation of the Crossman Peak Natural Scenic Area.

DATES: Effective from November 26, 1990, until completion of the Yuma District Resource Management Plan update, planned for 1992.

FOR FURTHER INFORMATION CONTACT: Leslie D. Allert, Outdoor Recreation Planner, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, 602–855–8017.

SUPPLEMENTARY INFORMATION: Public vehicle use of this route brings up the following issues:

Safety. The upper end of the road is extremely rugged and dangerous for vehicle use. The road is about 25 degrees slope, strewn with large rocks and boulders, and has about 75 degrees side slope. Any vehicle that would leave the road, would be a total loss and driver and passengers would be unlikely to survive.

Critical habitat. This area is part of the desert bighorn sheep lambing grounds and yearlong use areas. Disturbance of this wildlife and its habitat would have a detrimental effect on the species.

Natural scenic area. As a designated Natural Scenic Area, this area is to be protected against damage to the visual resources. Vehicular use could cause erosive scarring and fires that would degrade the scenic quality of the mountain that provides the scenic backdrop to Lake Havasu City.

Vandalism. The KZUL and Department of Public Safety repeaters location on private land at the end of the road have experienced vandalism. The road leads from the end of Bison Avenue at the upper edge of Lake Havasu City, crossing lands owned by Arizona State Land Department and then entering public lands. The road follows Falls Springs Wash up the western slope of the mountain, ending at the boundary with the private and in T. 14 N., R. 19 W., section 13. The road provides access to a 20-acre private parcel which includes the repeater for the KZUL radio station and Department of Public Safety radio facility. The vegetation on Crossman Peak includes an unusually low elevation, pure stand of pinyon pine (*Pinus monophylla*). Authority to designate routes closed is found in 43 CFR part 8340, § 8342.2 which is authorized under 43 U.S.C. 1701–1782 (Federal Land Policy and Management Act); 37 FR 2877, February 9, 1977 (Executive Order 11644, Use of Off-Road Vehicles of Public Lands); and 42 FR 26959, May 25, 1977 (Executive Order 11989, Use of Off-Road Vehicles of Public Land). The designation criteria is found in part 8340, §§ 8342.1(a) and 8342.1(b). Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisoned for not more than 12 months.

Dated: October 15, 1990.

Herman L. Kast,
District Manager.

[FR Doc. 90–25298 Filed 10–25–90; 8:45 am]
BILLING CODE 4310–32–M

[NM–030–00–4212–13; NMNM69994(18)]

An Exchange of Public Land, Dona Ana County, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action.

SUMMARY: The following described land has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716):

T. 24 S., 3 E., NMPM.
Sec. 21, SE¼SW¼, S½SE¼;
Sec. 28, E½NW¼, NE¼.
T. 25 S., R. 3 E.,

Sec. 34, Part of the N½ (160 acres) west of I–10.

The above land aggregates 460.00 acres. This is a continuation of the exchange process as provided for in the Memorandum of Understanting between the New Mexico State Office BLM and The Nature Conservancy dated September 19, 1988. The proposed conveyance of the above land to TNC is to equalize the exchange running account for non-Federal land that has been previously conveyed to the United States. The subject land has been identified for disposal in the BLM's Record of Decision for the Southern Rio Grande Plan Amendment (December 1986).

EFFECTIVE DATE: Comments on the proposed conveyance must be submitted on or before December 10, 1990.

ADDRESSES: Comments should be sent to the BLM, Las Cruces District, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Marvin M. James at the address above or at (505) 525–8228 or FTS 476–8200.

SUPPLEMENTARY INFORMATION: The land to be conveyed from the United States will be subject to the following reservations, terms, and conditions:

1. A reservation for a right-of-way for ditches or canals constructed by the authority of the United States Act of August 30, 1890 (43 U.S.C. 945).

2. A reservation retaining the geothermal resources and the right to prospect for, mine, and remove the geothermal resources.

3. Subject to the continuance of present livestock grazing use authorized by Bureau of Land Management Grazing Permit Allotment No. 15009, issued to Ms. Paul Price until September 24, 1992 as to the subject public land.

4. All valid existing rights of record.

Publication of this notice in the **Federal Register** will segregate the public land from appropriations under the public land laws, including the mining laws but not mineral leasing laws. This segregation will terminate upon the issuance of a patent or 2 years from date of publication of this notice in the **Federal Register** or upon publication of a Notice of Termination.

Any adverse comments will be by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: October 16, 1990.

Richard T. Watts,

Acting District Manager.

[FR Doc. 90–25303 Filed 10–25–90; 8:45 am]

BILLING CODE 4310–FB–M

[WY–940–01–4730–12]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Filing of plats of survey.

SUMMARY: The plats of survey of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10 a.m., October 12, 1990.

Sixth Principal Meridian

T. 55 N., R. 94 W.

The plat, representing the dependent resurvey of portions of certain lots and subdivisional lines, the subdivision of certain sections, and the metes and bounds survey of the Bighorn Canyon National Recreation Area Boundary, from Angle Points 80 through 123, T. 55 N., R. 94 W., Sixth Principal Meridian, Wyoming, Group No. 503, was accepted September 19, 1990.

T. 56 N., R. 94 W.

The plat, in five sheets, representing the dependent resurvey of portions of certain lots, south boundary and subdivisional lines, the subdivision of certain sections, and the metes and bounds survey of the Bighorn Canyon National Recreation Area Boundary, from Angle Points 45 through 80 and Angle Points 123 through 144, T. 56 N., R. 94 W., Sixth Principal Meridian, Wyoming, Group No. 503, was accepted September 19, 1990.

T. 57 N., R. 94 W.

The plat, in three sheets, representing the dependent resurvey of a portion of the Fourteenth Standard Parallel North, through Range 94 West, portions of the north boundary and subdivisional lines, and the subdivision of certain sections and the metes and bounds survey of the Bighorn Canyon National Recreation Area, from Angle Points 21 through 41 and from Angle Points 144 through 170, T. 57 N., R. 94 W., Sixth Principal Meridian, Wyoming, Group No. 503, was accepted September 19, 1990.

T. 58 N., R. 94 W.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 32 and the metes and bounds survey of the Bighorn Canyon National Recreation Area Boundary, from Angle Points 170 through 1, T. 58 N., R. 94 W., Sixth Principal Meridian, Wyoming, Group No. 503, was accepted September 19, 1990.

T. 56 N., R. 95 W.

The plat representing the metes and bounds survey of the Bighorn Canyon National Recreation Area Boundary, from Angle Points 41 through 45, T. 56 N., R. 95 W., Sixth Principal Meridian, Wyoming, Group No. 503, was accepted September 19, 1990.

T. 57 N., R. 95 W.

The plat representing the dependent resurvey of portions of the east boundary and subdivisional lines, the subdivision of certain sections and the metes and bounds survey of the Bighorn Canyon National Recreation Area Boundary, from Angle Points 11 through 21, T. 57 N., R. 95 W., Sixth Principal Meridian, Wyoming, Group No. 503, was accepted September 19, 1990.

T. 58 N., R. 95 W.

The plat representing the retracement of the Montana-Wyoming State Boundary between Mile Post 136 and 141, the dependent resurvey of portions of the south boundary, subdivisional lines, and subdivision of section 34, and the survey of the subdivision of certain sections and the metes and bounds survey of Parcel A, section 35 and Bighorn Canyon National Recreation Area Boundary, from Angle Points 1 through 11, T. 58 N., R. 95 W., Sixth Principal Meridian, Wyoming, Group Nos. 503 and 530, was accepted September 19, 1990.

These surveys were executed to meet certain administrative needs of the National Park Service.

ADDRESSES: All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: October 12, 1990.

Dennis D. Bland,

Acting Chief, Branch of Cadastral Survey.

[FR Doc. 90–25297 Filed 10–25–90; 8:45 am]

BILLING CODE 4310–84–M

RAILROAD RETIREMENT BOARD

Program Accessibility Self-Evaluation

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of availability for comment.

SUMMARY: Notice is hereby given that the RRB has completed the self-evaluation of its policies and practices required by 20 CFR part 365, Enforcement of Nondiscrimination on the Basis of Handicap in Railroad Retirement Board Programs. A copy of the summary report is available for review and comment by interested parties.

DATES: To be assured of consideration, comments must be submitted either in

writing or on audiotape and must be received on or before January 24, 1991. Comments should refer to specific sections of the self-evaluation summary.

ADDRESSES: Copies of the self-evaluation summary may be obtained by writing to: Samuel D. Lyons, Equal Employment Opportunity Officer, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611. Comments should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Candace R. Marr, Equal Employment Specialist, at 312–751–4943 (FTS 386–4943). TDD 312–751–4701 (FTS 386–4701). Copies of the self-evaluation will be made available on tape for persons with impaired vision who request them. They may be obtained by contacting the above office.

Dated: October 18, 1990.

Beatrice E. Ezerski,

Secretary to the Board.

[FR Doc. 90–25301 Filed 10–25–90; 8:45 am]

BILLING CODE 7905–01–M

INTERSTATE COMMERCE COMMISSION

Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Terex Corporation, 201 West Walnut Street, Green Bay, WI 54303.

2. Wholly-owned subsidiaries which will participate in the operations, and states of incorporation:

Jacksonville Shipyards, Inc.—Florida
The Mercer Company—Delaware
Electro Lube Devices, Inc.—Florida
Delphos Axle Corporation—Delaware
Maryland Shipbuilding & Drydock Company—Maryland
Fruehauf Trailer Corporation—Delaware

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–25936 Filed 10–25–90; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30305 (Sub-No. 2)]

Blue Mountain and Reading Railroad Company, Modified Rail Certificate

On October 13, 1990, a notice was filed by Blue Mountain and Reading Railroad Company (BM&R) for a modified certificate of public convenience and necessity under 49 CFR 1150.23. BM&R currently operates four lines of railroad under (1) a Second Supplemental Modified Rail Certificate, issued August 23, 1984; and (2) a Modified Rail Certificate, issued June 13, 1990.

BM&R and the Pennsylvania Department of Transportation (PDOT) have entered into a agreement for BM&R to provide common carrier freight service over USRA Line 196 between mileposts 84.70 and 86.05, in Auburn, Berks County, PA. The line to be operated connects with Consolidated Rail Corporation at Shamokin Secondary in Auburn. This notice is filed to obtain a modified certificate for this operation.[1]

This notice must be served on the Association of American Railroads (Car Service Division), as agent of all railroads subscribing to the car-service and car-hire railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

Dated: October 22, 1990.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–25395 Filed 10–25–90; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket Nos. 31730 and 31731]

Exemption; Rio Grande Industries, Inc., Southern Pacific Transportation Co., The Denver and Rio Grande Western Railroad Co., St. Louis Southwestern Railway Co., SPCSL Corp.; Trackage Rights; Burlington Northern Railroad Co. Lines Between Kansas City, MO, and Chicago, IL, et al.

Burlington Northern Railroad Company has agreed to grant overhead trackage rights to Southern Pacific Railroad Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp. between Kansas City, MO, and Chicago, IL. Norfolk and Western Railway Company has agreed to grant Southern Pacific Transportation Company, The Denver and Rio Grande Western Railroad Company, St. Louis Southwestern Railway Company, and SPCSL Corp., overhead trackage rights between Birmingham, MO, and Maxwell, MO, and between Birmingham, MO, and North Kansas City, MO. SPCSL Corp., has been designated as the carrier that will initially conduct trackage rights operations over the subject lines. These trackage rights will be consummated on or after September 28, 1990.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Any pleadings must be filed with the Commission and served on George W. Mayo, Jr., Hogan & Hartson, 555 13th Street NW., Washington, DC 20004–1109.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected prusuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), as clarified in *Wilmington Term. R.R., Inc.—Pur. & Lease—CSX Transp.*, 6 I.C.C.2d 799 (1990).

Dated: October 17, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–25397 Filed 10–25–90; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

Availability of Environmental Assessment for Conversion of the Way College of Emporia, Kansas to a Federal Prison Camp

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice of availability of an environmental assessment (EA).

SUMMARY:

Proposed Action

The Federal Bureau of Prisons (FBOP) has determined that additional minimum security capacity is needd in its system. The conversion of The Way College, Lyon County, Emporia, Kansas is being evaluated for such a purpose. the proposal calls for the adaptation of the buildings and grounds to accommodate approximately 650 minimum security inmates and a staff of approximately 150 employees. Potential impacts of the proposed action are evaluated by an

[1] USRA Line 196, a former Penn Central line, was acquired by the Commonwealth of Pennsylvania in May 1982. BM&R has been operating the line for some time under an agreement with PDOT, but inadvertently no modified rail certificate was obtained for this operation. BM&R and PDOT have agreed to extend the agreement and this notice has been filed to correct the failure to previously file.

Environmental Assessment (EA) which is available for review and comment.

The campus is comprised of approximately 41 acres and 275,000 square feet of building space distributed among eleven buildings including four dormitories, two libraries, gymnasium, administration/classrooms, chapel, food service building and maintenance/power plant facilities.

The EA focuses on cumulative impacts on topography, soils, geology, hydrology, utilities (i.e., water, sewer, and electric and natural gas supply), socioeconomics, transportation, archaeological or historic resources, and biological resources. The options of no action and alternative sites for the proposed facility are examined.

DATES: Copies of the EA will be available for review at the Emporia Public Library, 110 East Sixth Avenue and the FBOP beginning

October 26, 1990, which will commence a 30 day review and comment period. Comments concerning the EA should be made to the office listed below: Bureau of Prisons, Office of Facilities Development and Operations, Site Acquisition Office, 320 First Street, NW., Washington, DC 20534, (202) 514-6462.

William J. Patrick,

Chief, Office of Facilities Development and Operations, Bureau of Prisons, U.S. Department of Justice.

[FR Doc. 90-25420 Filed 10-25-90; 8:45 am]

BILLING CODE 4410-05-M

DEPARTMENT OF LABOR

Office of Secretary

Advisory Commission on United Mine Workers of America (UMWA) Retiree Health Benefits; Extension

In accordance with the provisions of the Federal Advisory Committee Act, and after consultation with the General Services Administration, the Secretary of Labor has determined that an extension to October 31, 1990 of the Advisory Commission on United Mine Workers of America (UMWA) Retiree Health Benefits is in the public interest. The extension is necessary for the Advisory Commission to complete its final report.

The Advisory Commission was created on March 12, 1990 to advise the Secretary of Labor on matters concerning health care issues arising from the United Mine Workers of America (UMWA) 1950 and 1974 Benefit Plans and the effects of resolving these issues on the coal industry as a whole.

The Advisory Commission consists of representatives of the UMWA, the coal operators—both UMWA and nonUMWA, the private insurance industry, academics, actuarial, medical care, and government policy experts, and those with extensive experience in labor law, mediation, and labor negotiation. Other than the Federal Government members, the members of the Advisory Commission shall not be compensated and shall not be deemed to be employees of the United States.

The Advisory Commission will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act.

Signed at Washington, DC, this 19th day of October 1990.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 90-25410 Filed 10-25-90; 8:45 am]

BILLING CODE 4510-23-M

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:	
Maine, ME90–2 (Jan. 5, 1990)	p. 503–504
Pennsylvania:	
PA90–1 (Jan. 5, 1990)	p. 909–910
PA90–2 (Jan. 5, 1990)	p. 921–922
Volume II:	
Iowa:	
IA90–2 (Jan. 5, 1990)	p. 23–24
IA90–5 (Jan. 5, 1990)	p. 37– 38–39
Illinois:	
IL90–8 (Jan. 5, 1990)	p. 135–136
IL90–9 (Jan. 5, 1990)	p. 143, 144–145
IL90–17 (Jan. 5, 1990)	p. 215, 216–218, 221
Michigan, MI90–2 (Jan. 5, 1990)	p. 441–442
Missouri, MO90–1 (Jan. 5, 1990)	p. 627, 628–646b
New Mexico, NM90–1 (Jan. 5, 1990)	p. 747–748, 750
Texas:	
TX90–9 (Jan. 5, 1990)	p. 1009–1010
TX90–10 (Jan. 5, 1990)	p. 1011–1012
Wisconsin: WI90–7 (Jan. 5, 1990)	p. 1181–1182
Volume III:	
Alaska, AK90–1 (Jan. 5, 1990)	p. 1, 2–3
Idaho, ID90–1 (Jan. 5, 1990)	p. 147–148
Oregon, OR90–1 (Jan. 5, 1990)	p. 309, 310–311, 317
Washington:	
WA90–1 (Jan. 5, 1990)	p. 369–371
WA90–2 (Jan. 5, 1990)	p. 395, 396–398, 401
WA90–3 (Jan. 5, 1990)	p. 405–406
WA90–7 (Jan. 5, 1990)	p. 419–420
WA90–8 (Jan. 5, 1990)	p. 425, 426–427.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 19th day of October 1990.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 90–25152 Filed 10–25–90; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–24, 148 et al.]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

TA–W–24,148, Fairchild Aircraft Corp., San Antonio, TX; TA–W–24,148A Crestview Aerospace Corporation, Crestview, FL; TA–W–24,148B Fairchild Gen-Aero Inc., San Antonio, TX.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 18, 1990 to workers of Fairchild Aircraft Corporation, San Antonio, Texas and to workers of Crestview Aerospace Corporation, Crestview, Florida, a subsidiary of Fairchild Aircraft.

Based on new information from the company, production is integrated between Fairchild Gen-Aero in San Antonio and Fairchild Aircraft Corporation, San Antonio, Texas. Workers at Fairchild Gen-Aero produce the avionics and the interior of the aircraft produced by Fairchild Aircraft. Accordingly, the certification is amended by including workers at Fairchild Gen-Aero in San Antonio, Texas. The amended notice applicable to TA–W–24,148 is hereby issued as follows:

All workers of Fairchild Aircraft Corporation, San Antonio, Texas; Crestview Aerospace Corporation, Crestview, Florida and Fairchild Gen-Aero, San Antonio, Texas who became totally or partially separated from employment on or after March 1, 1989 are eligible to apply for adjustment assistance under section 222 of the Trade Act of 1974.

Signed at Washington, DC, this 11th day of October, 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90–25411 Filed 10–25–90; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–20,948 et al.]

Halliburton Geophysical Services, Inc.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA–W–20,948, Geophysical Services, Inc., Stafford, TX; TA–W–21,184, Geosource, Inc., Operating in 27 States; TA–W–22,223, Geophysical Service, Inc., Dallas, TX; TA–W–22,224, Geophysical Service, Inc., in 42 States.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued Certifications of Eligibility To Apply for Worker Adjustment Assistance on November 11, 1988 (TA–W–20,948) and on February 9, 1989 (TA–W–22,223 and TA–W–22,224) applicable to all workers of Geophysical Service, Inc., Stafford, Texas, Dallas, Texas and at various locations in 42 States, respectively. A Certification was also issued on November 25, 1988 to workers of Geosource, Inc. (TA–W–21,184). Certification (TA–W–21,184) was amended on April 25, 1989 to include workers in all locations in 27 States.

At the request of the State Agency the Department reviewed the instant certifications for Geophysical Services, Inc., and Geosource, Inc., and found that Halliburton Geophysical Services, Inc., Houston, Texas, meets all the requirements for a successor-in-interest firm.

Signed at Washington, DC, this 12th day of October 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90–25413 Filed 10–25–90; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–24,712 & TA–W–24,715]

Hazlehurst Lingerie Co., Glennville Lingerie Co., Hazlehurst and Glennville, GA; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 13, 1990 in response to a worker petition which was filed on behalf of workers at Hazlehurst Lingerie Company and Glennville Lingerie

Company, Hazlehurst and Glennville, Georgia.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, DC, this 17th day of October, 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-25412 Filed 10-25-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,302 et al.]

Tucker Drilling Co., Inc., San Angelo, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of TA-W-24,301 San Angelo, TX; TA-W-24,301A Kermit, TX; TA-W-24,301B Big Lake, TX; TA-W-24,301C Andrews, TX; TA-W-24,301D Odessa, TX.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 8, 1990, applicable to all workers of Tucker Drilling Company, Inc., and its affiliate TDC Supply, Inc., both of San Angelo, Texas. The notice was published in the **Federal Register** on July 26, 1990 (55 FR 26035).

At the request of the State Agency, the Department reviewed its investigation and found that TDC Supply had other locations which had worker separations during the relevant period. The Department also found that a substantial portion of TDC Supply's activities were for the Tucker Drilling Company. Also, TDC Supply was sold on November 17, 1989 to the Union Supply Company. Therefore, the certification in amended by including worker separations at all locations of TDC Supply, Inc. through November 16, 1989. The amended notice applicable to TA-W-24,301 and TA-W-24,302 is hereby issued as follows:

All workers of TDC Supply, Inc., San Angelo, Texas; Big Lake, Texas; Kermit, Texas; Andrews, Texas and Odessa, Texas who became totally or partially separated from employment on or after March 30, 1989 and before November 17, 1989 and all workers of the Tucker Drilling Company, Inc., San Angelo, Texas who became totally or partially separated from employment on or after March 30, 1989 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 15th day of October 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-25414 Filed 10-25-90; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-90-138-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, P.O. Box 373, St. Louis, Missouri 63166, has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Mine No. 10, (I.D. No. 11-00585) located in Christian County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Petitioner states that application of the standard would result in a diminution of safety for the following reasons:

(a) Airborne dust would be deposited in and on the electrical components of the transformers, causing arcing between components;

(b) Air velocities would be increased on track and belt entries; and

(c) Areas of unstable roof could fall, pushing out return stoppings and causing return air to be coursed over electrical installations.

3. As an alternate method, the petitioner proposes to use dry type, sheet steel enclosed electrical transformers equipped with safety equipment, installed in crosscuts adjacent to the track entry where they can be observed, maintained, and kept clean and dusted. Fire sensors would be placed above the transformers. Belt and track entries would not be used to ventilate the working sections.

4. For these reasons, the petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 26, 1990. Copies of the petition are available for inspection at that address.

Dated: October 10, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-25415 Filed 10-25-90; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

[Docket No. NRTL-1-89]

ETL Testing Laboratories, Inc.; Request for Expansion of Recogn tion as Nationally Recognized Testing Laboratory

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of request for expansion of recognition as a Nationally Recognized Testing Laboratory.

SUMMARY: This notice announces the application of the ETL Testing Laboratories, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is November 26, 1990.

ADDRESSES: Send Comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., room N3653, Washington, DC 20210.

Notice of Application

SUPPLEMENTARY INFORMATION: Notice is hereby given that the ETL Testing Laboratories, Inc., (ETL), which previously made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 9-83 (48 FR 35763), and 29 CFR 1910.7 for recognition as a Nationally

Recognized Testing Laboratory (see 54 FR 8411, 2/28/89), and which was so recognized (see 54 FR 37845, 9/13/89), has made application for an expansion of its current recognition, for the equipment or materials listed below.

The addresses of the concerned laboratories are:

ETL Testing Laboratories, Inc., Cortland Safety Division, Industrial Park, Cortland, New York 13045.
ETL Testing Laboratories, Inc., 5855–P Oakbrook Parkway, Norcross, Georgia 30093.
ETL Testing Laboratories, Inc., West Coast Division, 660 Forbes Boulevard, South San Francisco, California 94080.

Expansion of Recognition

ETL Testing Laboratories, Inc. (ETL) submitted an application for expansion of its current recognition, (Exhibit 13A), to include the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c).

ANSI/UL 5—Surface Metal Electrical Raceways and Fittings
UL 181—Factory Made Air Ducts and Connectors
UL 378—Draft Equipment
ANSI/UL 510—Insulating Tape
ANSI/UL 561—Floor-Finishing Machines
ANSI/UL 651—Schedule 40 and 80 PVC Conduit
ANSI/UL 674 (1)—Electric Motors and Generators for Use in Hazardous Locations, Class I, Groups C and D, Class II, Groups E, F, and G
ANSI/UL 698 (1)—Industrial Control Equipment for Use in Hazardous (Classified) Locations
Ul 746C—Polymeric Materials—Use in Electrical Equipment Evaluations
ANSI/UL 756—Coin and Currency Changers and Actuators
ANSI/UL 823 (1)—Electric Heaters for Use in Hazardous (Classified) Locations
ANSI/UL 844 (1)—Electric Lighting Fixtures for Use in Hazardous (Classified) Locations
ANSI/UL 857—Electric Busways and Associated Fittings
ANSI/UL 894 (1)—Switches for Use in Hazardous (Classified) Locations
ANSI/UL 916—Energy Management Equipment
ANSI/UL 924—Emergency Lighting and Power Equipment
ANSI/UL 961—Hobby and Sports Equipment
ANSI/UL 1002 (1)—Electrically Operated Valves for Use in Hazardous Locations, Class I, Groups A, B, C, and D, and Class II, Groups E, F, and G
ANSI/UL 1037—Antitheft Alarms and Devices
ANSI/UL 1069—Hospital Signaling and Nurse-Call Equipment
UL 1604—Electrical Equipment for Use in Class I and II, Division 2, and Class III Hazardous (Classified) Locations
Ul 1950—Information Technology Equipment Including Electrical Business Equipment
ANSI Z21.64 (2)—Direct Vent Central Furnaces
ANSI Z83.18 (2)—Direct Gas-Fired Industrial Air Heaters

(1)—Testing and certification is limited to Class I, Division I locations.
(2)—Testing and certification is limited to equipment designed for use with "liquefied petroleum gas" ("LPG" or "LP–GAS").

In addition, in a letter from ETL dated April 5, 1990, a request was made to include additional test standards, (Exhibit 13B), of which the following were applicable:

ANSI/UL 44—Rubber-Insulated Wires and Cables
UL 910—Test Method for Fire and Smoke Characteristics of Electrical and Optical-Fiber Cables Used in Air Handling Spaces
UL 1459—Telephone Equipment
UL 1581—Reference Standard for Electrical Wires, Cables, and Flexible Cords
UL 1666—Standard Test for Flame Propagation Height of Electrical and Optical-Fiber Cables Installed Vertically in Shafts

The NRTL Recognition Program staff made an in-depth study of the details of ETL's application, amendments, and supplementary material and determined that an additional on-site visit to the Cortland facility was not warranted. A report on the "Expansion of ETL's Recognition under the NRTL Program", dated August 7, 1990, was prepared (see Exhibit 13C).

Preliminary Finding

Based upon a review of the details of ETL's recognition, an evaluation of its present application including details of necessary test equipment, procedures, and special apparatus or facilities needed, and the NRTL staff's report on the expansion of ETL's recognition, the Assistant Secretary has made a preliminary finding that the equipment and expertise required to list products to the aforementioned standards are within the capabilities of the laboratory, and that the proposed additional test standards (product categories) can be added to ETL's recognition.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the proposed expansion of the current recognition of the ETL Testing Laboratories, Inc., as required by 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than November 26, 1990, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Washington, DC 20210.

Copies of all pertinent documents (Docket No. NRTL–1–89), are available for inspection and duplication at the Docket Office, room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

Signed at Washington, DC, this 19th day of October 1990.

Gerard F. Scannell,

Assistant Secretary.

[FR Doc. 90–25416 Filed 10–25–90; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Presidential Libraries; Meeting

Notice is hereby given that the Committee on Presidential Libraries will meet on Wednesday, November 14, 1990, from 10 a.m. to 4 p.m., in room 105 of the National Archives Building, 7th and Pennsylvania Avenue, NW., Washington, DC.

This will be the fourth meeting of the committee. The agenda for the meeting will be the development of presidential library core programs and a discussion of future presidential libraries.

The meeting will be open to the public. For further information, call John Fawcett on (202) 501–5700.

Dated: October 18, 1990.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 90–25405 Filed 10–25–90; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public. This collection is a revision of the Foundation's process for receiving and awarding of proposals. Interested persons are invited to submit comments to the following individuals within 30 days of the published date of this notice. Comments may be submitted to:

1. *Agency Clearance Officer:* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or telephone (202) 357–7335.

2. *OMB Desk Officer:* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, Paperwork Reduction Project (3145–0058), OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: 1991 National Survey of Natural and Social Scientists and Engineers.
Affected Public: Individuals.
Responses/Burden Hours: 39,839 respondents; 10 minutes per response.
Abstract: The date collected in this survey enable NSF to partly fulfill the legislative requirement which obligates the agency to develop data on the Nation's scientific and technical population of the United States. The information provided allows for policy and planning activities by officials of government, private industries, and academic institutions.

Dated: October 22, 1990.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 90-25313 Filed 10-25-90; 8:45 am]

BILLING CODE 7555-01-M

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public. This collection is a revision of the Foundation's process for receiving and awarding of proposals. Interested persons are invited to submit comments to the following individuals within 30 days of the published date of this notice. Comments may be submitted to:

1. *Agency Clearing Officer:* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or telephone (202) 357-7335.

2. *OMB Desk Officer:* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, Paperwork Reduction Project (3145-0058), OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Survey by the U.S.-Japan Task Force on Access of U.S. investigators who have done research in Japan since January 1, 1988.
Affected Public: Individuals.
Responses/Burden Hours: 200 respondents; 30 minutes per response.
Abstract: Annex II to the "Agreement between the Government of the United States of America and the Government of Japan on Cooperation in Research & Development in S&T" authorized a Task Force on Access to survey major government-sponsored research & development in the U.S. & Japan. The extension of the approval of NSF Form 1265 is needed to enable information on U.S. researchers spending time in Japan to be recorded until the end of the above agreement.

Dated: October 22, 1990.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 90-25314 Filed 10-25-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Possible Safety Impacts of Economic Performance Incentives; Draft Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft policy statement.

SUMMARY: This statement presents the policy of the Nuclear Regulatory Commission (NRC) with respect to the possible safety impacts of economic performance incentive programs established by State commissions regulating electric utilities. The policy statement (1) contains a discussion of the potential impact of the policies and actions of State regulatory bodies, emphasizing that such actions can have either a positive or negative impact on public health and safety; (2) reflects the Commission's concern that certain forms of economic performance incentive regulation have the potential for adversely affecting nuclear plant operation and public health and safety; (3) specifically identifies those methods or approaches that are of particular concern (e.g. use of sharp thresholds, measurement of performance over very short time intervals, lack of "null zone," and inappropriate reliance on SALP scores); (4) indicates that the NRC will continue to monitor the application of economic performance incentives and performance criteria to nuclear power plant operations; and (5) urges licensees and State regulatory commissions to apprise the NRC of economic performance incentive programs that are being considered for application to NRC licensees.

DATES: The comment period expires on December 10, 1990. Comments received after this time will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Mail written comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland between 7:30 a.m. and 4:15 p.m. Federal workdays. Comments may also be delivered to the NRC Public Document room, 2120 L Street NW., Washington, DC, between 7:45 a.m. and 4:15 p.m. Copies of comments received may be examined at the NRC Public Document room.

FOR FURTHER INFORMATION CONTACT: Anthony T. Gody, Sr., Chief, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-1254.

SUPPLEMENTARY INFORMATION:

Introduction

After reviewing the information on economic performance incentive programs put in place by State regulatory commissions that regulate the economic returns of utilities operating nuclear power plants, the Commission has decided that it would be appropriate to set forth its views on the possible safety impacts of such programs in a Commission Policy Statement.

Background

In the exercise of their jurisdiction over the economics of the generation of electricity, a number of State regulatory commissions and the Federal Regulatory Commission have established economic performance incentive programs relating to electric power plants. Some programs have existed unchanged for a number of years, whereas others have been substantially modified or are newly established. They can play an important role in improving the economic performance of electric power plants. They can also have an impact on the safety of nuclear power plants. The NRC monitors and evaluates these incentive programs to determine their possible impact on the safe operation of nuclear power reactors. The NRC firmly believes that these programs should not create incentives to operate a plant when it should be shut down for safety reasons.

Statement of Policy

The Commission's views on economic performance incentive programs are as follows:

Potential Impacts

The NRC recognizes that the existing programs vary considerably from State to State and that the plans are not easily classified, especially as to their possible impact on safe plant operations. However, certain general characteristics of programs can be evaluated and found to be either desirable (or at least neutral) or undesirable in their safety impact.

A desirable plan provides incentives to make improvements in operation and maintenance that result in long-term

improvement in the reliability of the reactor, main generator and their support systems. An undesirable plan provides incentives to operate a facility with potential safety problems or to start up before fully ready merely to meet an operational goal.

A desirable economic performance incentive rewards a utility for a sound operations and maintenance program and for correcting recurrent or predictable failures or other potential problems that could lead to an operational transient, unplanned plant outage or derating. Such an incentive is desirable because a well run plant and prompt correction of problems enhance safety. Unanticipated transients and shutdowns challenge operators and safety systems and, although a low probability, could initiate a more serious event. Improved performance in a utility's operational organization, which can be encouraged by economic performance incentives, can be conducive to improving both safety and economic performance.

The current influence of incentive plans or reactor safety is believed to be small. However, the Commission's concern with incentive plans is that, in the interest of real or perceived short-term economic benefit, utilities might hurry work, take short cuts, or delay a shutdown for maintenance in order to meet a deadline, a cost limitation, or other incentive plan factor. Such a program could encourage, directly or indirectly, the adoption of actions designed to maximize measured performance in the short term at the expense of plant safety (public health and safety). If a licensee keeps a reactor online when it should be taken down for preventive or corrective maintenance and uses shortcuts or compressed work schedules to minimize down time, these actions could adversely impact safety.

Potential Adverse Impacts on Plant Operation and Public Health and Safety

Some specific features of incentive plans now used by some States could adversely affect public health and safety. These features are (1) sharp thresholds between rewards and penalties, (or between penalties and null zones, or rewards and null zones) and (2) performance measurements having short time intervals.

A sharp threshold occurs when a licensee misses a target capacity factor and must bear a large part or all of the resulting replacement power costs. A sharp threshold provides an incentive to continue plant operation to achieve a target capacity factor to avoid the large replacement power cost or to earn a substantial reward. This type of incentive could divert attention from safe plant operation.

Performance measurements for short-term intervals provide incentives to focus on a short term target, such as a higher capacity factor or availability factor. This target could become the primary focus, diverting attention from long-term goals of reliability and operational safety. In contrast, performance measurements for long-term intervals provide incentives to the utility to follow sound maintenance and operational practices and make system and component changes so that the licensee improves operating performance in terms of availability and capacity factors.

Short-term measurements tend to make safety and economic goals conflict; long-term measurements tend to make the two goals complementary.

Specific Features That Cause NRC Concern

Sharp thresholds and short-term performance measures can adversely impact safety. In addition, plans that use NRC periodic performance assessments and performance indicators of the NRC or industry as a basis for rewards or penalties present several major concerns. First, the NRC's Systematic Assessment of Licensee Performance (SALP) was developed to assist the NRC in assessing the performance relative to the safety of individual facilities and to serve as a basis for communicating to the licensee. It therefore addresses selected areas of licensee activity, but does not necessarily cover all significant performance areas. Further, the scores are not based on absolute quantitative considerations, and therefore the significance of the actual numerical score is limited. The NRC staff expects licensees to focus on the facts in the SALP report, the issues identified, and the apparent root causes of problems. The prospect of financial rewards or punishments for licensees based on SALP ratings causes concern in that it may change the focus of the SALP process from the underlying issues, where it should properly be, to the numerical ratings themselves. If the issues identified in a SALP report are obsured by concerns over the financial consequences incurred as a result of that rating, the process may not achieve the desired objective and may instead result in a licensee adopting corrective actions which produce rapid results rather than those which yield the highest increase in safety in the long term.

Similarly, performance indicators were developed to assist the NRC and licensees in identifying trends and areas of performance that should receive a more detailed assessment. Inappropriate emphasis on these indicators in an incentive program could direct a licensee's attention toward improving the scores by possibly inappropriate means rather than toward identifying and correcting underlying safety conditions.[1]

Continued NRC Monitoring Program

The NRC will periodically survey State regulatory commissions having rate regulation over power reactors and the Federal Energy Regulatory Commission (FERC) to identify any new programs or substantial changes in existing programs and to ascertain how the programs have been implemented, in particular whether large penalties have been imposed.

We plan to update the survey annually. We will periodically assess the frequency of the surveys to determine the need for schedule adjustments.

Licensees and Utility Commissions Urged To Inform NRC of Program Initiatives

The NRC needs to be apprised of economic performance incentive programs that are being planned by State regulatory commissions and that can impact safety. Frequently, these programs are developed in coordination with regulated utilities. Therefore, the NRC will be requesting that licensees report whenever these commissions are developing or substantially revising economic performance incentives. The NRC also will be asking FERC and the State utility regulatory commissions to discuss with the NRC initiatives to impose or change an economic performance incentive program that applies to an NRC licensee. The objective will be that the NRC be informed of the principal features of the program so that its likely impact on plant safety can be assessed. Further, the NRC will be requesting licensees to report the penalties assessed through these programs as they occur. A free exchange of information between the

[1] For further information on existing economic incentive programs and the possible impact of such programs on nuclear safety, see NUREG/CR-5509, "Incentive Regulation of Nuclear Power Plants by State Public Utility Commissions", 1989. Copies of NUREG/CR-5509 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for public inspection and/or copying at the NRC Public Document room, 2120 L. St., NW., Washington, DC.

NRC and the agencies with economic jurisdiction will assist the NRC and those agencies to work together in their pursuit of the goals of safe and economical operation of nuclear power plants.

Dated at Rockville, Maryland, this 22nd day of October, 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90-25376 Filed 10-25-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Request for Extension of OF-300 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a proposed unchanged extension of a form which collects information from the public. Optional Form 300, Qualifications Analysis and Appraisal of Candidates for Supervisory Positions, is completed by the employers and/or co-workers of applicants for supervisory positions throughout the Federal Government. The qualification standard for supervisory positions in General Schedule occupations (GS-15 and below) contained in the Qualification Standards Handbook, recommends the use of this form to facilitate the collection of information used in evaluating supervisory candidates. Approximately 400 forms are completed annually and require about 15 minutes to complete for a total burden of 100 hours. For copies of this proposal, call C. Ronald Trueworthy on (202) 606-2261.

DATES: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to:

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, room 6410, 1900 E Street, NW., Washington, DC 20415,

and

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Stephen Perloff (202) 606-2557.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 90-25377 Filed 10-25-90; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-28556; File No. SR-CBOE-90-08]

Self-Regulatory Organizations; the Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice and Order Granting Accelerated Approval to Amendments No. 3, 4, 5, and 6 Relating to Trading in Stocks, Warrants, and Securities Other Than Options

I. Introduction

On April 27, 1990, the Chicago Board Options Exchange ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 there under,[2] a proposed rule change to establish rules governing the trading of stocks, warrants, and other securities instruments and contracts on the CBOE. Amendments Number 1, 2, 3, 4, 5, and 6 submitted on June 19, July 24, September 14, October 16, October 17, and October 19, 1990, respectively, proposed additional changes to the proposed rule change.[3]

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] In Amendment No. 1, the CBOE proposed, among other things, a requirement that issuers have a minimum stock price of $5 per share and a minimum public market value of $3,000,000 to list an equity security on the Exchange. The changes proposed by the CBOE in Amendment No. 2 include the addition of rules governing the trading of odd-lots, modifications to the Exchange's alternate listing criteria for research and development issuers, and clarification of the Exchange's margin requirements for market-makers. Amendment No. 3 provides that adjusted Intermarket Trading System ("ITS") bids and offers will be used to execute odd-lot market orders and requests accelerated approval. Amendments No. 4 and 5, which are both non-substantive amendments clarifying points that were included already in the CBOE proposal, make clear that the CBOE will trade stocks and related options on separate trading floors and that the Exchange's listing criteria are fixed requirements which are not discretionary as to their application. Amendment No. 5 also deletes Interpretation and Policy .02 to Rule 30.40, to correct an error in the original proposed rule change The CBOE requests accelerated approval of Amendments No. 4 and 5. In Amendment No. 6, the CBOE proposes to establish a requirement that all CBOE-listed compnies have an audit committee comprised entirely of independent directors. The CBOE requests accelerated approval of Amendment No. 6.

The proposed rule change and Amendments Number 1 and 2 were published for comment in Securities Exchange Act Release No. 28015 (May 14, 1990), 55 FR 21280 (May 23, 1990) and Securities Exchange Act Release No. 28290 (July 31, 1990), 55 FR 32161 (August 7, 1990). One comment letter was received by the Commission on the proposal.[4]

II. Description of the Proposal

The CBOE currently is an options marketplace listing and trading options on more than 200 listed and over-the-counter equity securities, index options based on the Standard & Poor's ("S&P") 100-Stock Price Index ("S&P 100") and the S&P 500-Stock Price Index ("S&P 500"), market baskets, and options based on United States treasury bonds and notes. The CBOE proposes to expand its current market by authorizing the trading on the Exchange of stocks, warrants, and other securities instruments and contracts, other than options, on either a listed or unlisted basis. To facilitate the trading on the Exchange of these securities instruments, the CBOE proposes to amend substantially the existing rules of its Board of Governors.

Currently, the CBOE rules in chapters I through XIX govern the trading on the Exchange of options.[5] Under the CBOE proposal, these rules would be expanded to include two new chapters setting forth the rules that would govern the trading and listing on the Exchange of stocks, warrants, and other securities instruments and contracts, chapter XXX, entitled *Stocks, Warrants and Other Securities*, and chapter XXXI, entitled, *Approval of Securities for Original Listing*. These two new chapters would consist of rules governing, among other things, trading procedures and practices on the Exchange floor, the ITS Plan, procedures for the settlement of securities transactions, original listing and maintenance criteria, suspension and delisting policies, and listing application procedures and fees. In addition to adding two new chapters, the CBOE proposes to modify several of its existing options rules to make them applicable to the trading of securities other than options.

Under the proposal, in addition to the trading of options, and options products, the Exchange would trade stocks, warrants, including currency and index

[4] See note 22, *infra* and accompanying text.

[5] The complete CBOE rules are comprised of chapters I through XXVI, with chapters XXI through XXVI setting forth specific rules governing options products, such as Index Options and Market Baskets.

warrants, and such other securities instruments and contracts as the CBOE Board of Directors may from time to time declare subject to its proposed new rules.[6] The new rules proposed as chapter XXX would be applicable only to the trading of stocks and warrants, and such other securities instruments and contracts as determined subject to these rules by the CBOE Board of Directors. Securities subject to the chapter XXX rules would also be subject to the existing CBOE rules in chapters I through XIX to the same extent as those rules presently apply to options contracts, unless otherwise supplemented by the new rules in chapter XXX.[7] In instances where existing CBOE rules have been replaced by particular rules in chapter XXX, stocks, warrants, and other securities would be governed only by the rules in new chapter XXX.

The existing rules of the Exchange that apply to options already address many of the subjects that are applicable to a national securities exchange engaged in trading of securities other than options. Consequently, the CBOE proposal amends its rules only as necessary to incorporate any additional or differing standards that are necessary for the trading of such securities. In addition, the Commission notes that many of the CBOE's proposed rules applicable to the trading of such securities are patterned after existing rules of several of the existing national securities exchanges.[8] For instance, the CBOE has proposed standards for the intitial and continued listing of stock and other securities on the Exchange, including listing standards for common stock, preferred stock, bonds and debentures, warrants, and currency and index warrants.[9] With slight variations, the CBOE's proposed listing standards are the same as the existing listing standards on the American Stock Exchange ("Amex"), *e.g.*, to list common stock on the CBOE, an issuer must have: A net worth (defined as total assets, including the value of patents, copyrights, and trademarks, but excluding the value of goodwill, less total liabilities) of $4,000,000; pre-tax income of $750,000 in its last fiscal year, or in two of its last three fiscal years and net income of at least $400,000; a public distribution of shares as follows: 500,000 shares and 800 holders, or 1,000,000 shares and 400 holders, or 500,000 shares and 400 holders with an average daily trading volume of 2,000 shares for the six months prior to the listing application; a minimum price per share of $5; and a $3,000,000 market value of shares publicly held. Three significant aspsects of the CBOE's proposal that are different from other national securities exchanges are discussed below.

The CBOE currently employs a competitive, multiple market-maker system to trade options on its trading floor. Under this system, the Exchange uses no specialist; instead, CBOE "market-makers" compete with one another on the trading floor as dealers for their own accounts. The Exchange has a separate Order Book Official ("OBNO") [10] who operates the public order book.[11] CBOE floor brokers act only as agents and execute customer and firm proprietary orders. In addition, the CBOE currently has a specialist-type trading system in the form of Designated Primary Market-Makers ("DPMs") in various options classes. A DPM, who has a number of functions resembling those of a specialist, is a CBOE member who functions in approved options classes as a market-maker, and in the place of the OBO, the agent for the limit order book.[12] For instance, when acting as a market-maker, the DPM is obligated to fulfill all obligations of a market-maker in his or her appointed option class or classes. When acting in the place of the OBO in appointed options classes, the DPM must fulfill his or her obligation of due diligence and all other obligations associated with these functions.[13]

Under the proposal, the CBOE will use its competitive, multiple market-maker system to trade stocks, warrants, and securities other than options.[14] As is the case with certain options classes, an OBO or DPM would manage the public order book. With regard to whether a DPM would be appointed for certain stocks, warrants, and other securities, the CBOE intends to offer or place all of these new securities to be traded up for DPM selection in a manner similar to its existing procedure for allocating new option classes in Rule 8.80.[15] As is currently the case with options trading on the Exchange floor, the essential functions of a specialist would be fulfilled by market makers, OBOs, or DPMs. Floor brokers would act as agents and execute customer and firm proprietary orders on the CBOE floor. While Floor Brokers also could function as market-makers, they are restricted to

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[6] The CBOE recently filed with the Commission a proposed rule change in trade on the Exchange interests in unit investment trusts ("UIT interests"). See Securities Exchange Act Release No. 28132 (June 19, 1990), 55 FR 26038 (June 26, 1990) (File No. SR–CBOE–90–13). The CBOE rule filing defines UIT interests as any share, unit or other interest in or relating to a unit investment trust, including any component resulting from the subdivision or separation of such an interest. As of this date, this rule filing still is under review by the Commission.

[7] Appendix A to chapter XXX lists the Exchange rules in chapters I through XIX that apply to the trading of stocks, warrants, and other securities, and, where applicable, indicates that a rule in chapter I through XIX is supplemented by a rule in chapter XXX.

[8] For instance, many of the CBOE's proposed rules in new chapters XXX and XXXI, as well as many changes to its existing options rules, are similar to existing rules of the New York and American Stock Exchanges.

[9] As discussed previously, the Commission is currently reviewing a proposed rule change filed by the CBOE to trade UIT interests on the Exchange. See Securities Exchange Act Release No. 28132 (June 19, 1990), 55 FR 26038 (June 26, 1990) (File No. SR–CBOE–90–13). In that filing, the CBOE proposes standards for the intitial and continued listing of UIT interests on the Exchange.

[10] The OBO is an exchange employee who maintains the public customer limit book in the class of options assigned to him or her and is responsible for ensuring that orders placed with him or her on the book are executed properly. See CBOE Rule 7.1

[11] Most national securities exchanges use a specialist system to trade securities. For instance, the Philadelphia, New York, and American Stock Exchanges centralize the functions of market maker and OBO in the person of a specialist. The Cincinnati Stock Exchange uses a competitive market-maker system, but it is automated with no trading crowd.

[12] The DPM's responsibilities are set forth in CBOE Rule 8.80.

[13] See CBOE Rules 8.1, 8.2, 8.3 and 8.7. In addition to the normal obligations of a floor broker and a market-maker, the DPM is responsible for, among other things, the dissemination of accurate market quotations and resolving trading disputes in accordance with Exchange Rules.

[14] The CBOE has stated to the Commission that its trading of stocks, warrants, and securities other than options will take place on a trading floor separate from the location where its options are traded. *See* Amendment No. 4 and letter from Robert P. Ackermann, Vice President, Legal Services, CBOE, to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, dated October 15, 1990. In the past, the Commission has raised concerns about the trading of derivative and underlying securities at the same physical location ("side-by-side trading"). Primarily, the Commission has been concerned that professionals with competitive advantages in one marketplace may utilize such advantages for personal gain in a related marketplace. The Commission believes the CBOE's proposal to physically separate its trading floors (no side-by-side trading) should adequately address these issues and prevent any predatory and/or manipulative practices by CBOE members. For a complete discussion of this issue, see *supra* notes 31–33 and accompanying text.

[15] See letter from Robert P. Ackermann, Vice President, Legal Services, CBOE, to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, dated October 15, 1990. Most of the standards in that rule are capable of being applied to a DPM selection for stocks, warrants, and securities other than options. Nevertheless, the Commission expects the CBOE, after gaining one year's experience with trading stocks and warrants, to determine if any different DPM selection standards and trading crowd evaluation criteria are necessary.

acting in only one of these capacities in any particular security on a given day.[16]

Under the CBOE proposal, the DPM system would be extended to stocks and the other non-options securities subject to the new chapter XXX rules. In addition to his or her responsibilities as a market-maker, a DPM in securities other than options would be required to maintain continuously on the floor of the Exchange a two-sided market in the securities for which he or she has been appointed [17] to afford liquidity to other buyers and sellers of such securities whose orders are represented on the Exchange floor.

Another significant aspect of the CBOE proposal is that it does not contain any off-board trading restrictions, such as New York Stock Exchange ("NYSE") Rule 390, which prevents NYSE members from executing trades off the exchange floor.[18] Because the CBOE proposal does not impose on its members off-board trading restrictions, CBOE member broker-dealers, unless members of other exchanges and therefore subject to their off-board trading restrictions, would be able to effect principal or in-house agency cross transactions in exchange-listed stocks off the exchange floor, would be able to compete with market-makers in making markets in exchange-listed stocks, and would be able to execute trades in exchange-listed stocks in the domestic OTC market.[19]

Finally, the CBOE proposal contains a "book priority" rule that would apply to the trading of stocks, warrants, and securities other than options. Under the CBOE's proposed book priority rule, where two or more bids or offers are made at the same price, and one order is displayed on the limit order book, the order on the book is entitled to priority, and will have precedence, over all other orders at that price announced in the trading crowd.[20] For example, where two or more bids represent the best price and one such bid is displayed in the book, such bid shall have priority over any other bid at the post. In addition, even after a transaction has been effected, removing all bids and offers from the floor, orders left on the book would continue to retain priority over subsequent bids or offers made at the same price as the orders on the book.

The CBOE has proposed also a "time priority" rule. Thus, for example, an order made first in time at a particular price and placed on the book retains priority over a subsequent order at the same price which is placed on the book. Further, under the CBOE's current rules, which will apply to stock trading, the OBO (or DPM) may accpet for the book only market or limit orders from public customers.[21] Firm proprietary and market maker orders are not acepted.

III. Comments Received

The NYSE commented on the CBOE proposal in a recent letter to the Commission that addressed primarily the cooperative efforts of the options exchanges in developing a linkage system for the options markets.[22] In that letter, the NYSE suggested also that it would be inappropriate for the Commission to grant the CBOE the authority to trade stocks until the NYSE and all the other exchanges could compete fully on options. The NYSE further suggested, in its letter, that the CBOE should not be granted Participant status in the Consolidated Tape Association ("CTA"), the Consolidated Quotation System ("CQS"), or the Intermarket Trading System ("ITS") until the NYSE commences multiple listing of options.

In a response to the NYSE's comments, the CBOE stated that the NYSE letter improperly ties the NYSE's cooperation regarding the development of a linkage system in the options markets to the CBOE's proposed stock trading.[23] The CBOE stated also that the NYSE wrongly suggests that the CBOE should not be permitted to become a participant in CTA, CQS, and ITS until the NYSE commences multiple listing of options.

The NYSE responded to the CBOE's letter and stated that the CBOE had misinterpreted the NYSE's comments with respect to the CBOE's proposal to trade stocks, warrants, and securities other than options.[24] In its response letter, the NYSE stated that its concern with the timing of the CBOE's participation in CTA, CQS, and ITS was predicated solely upon whether the Commission approved SR–CBOE–90–08, the instant rule filing. The NYSE's response letter made no substantive comment on whether the CBOE proposal to trade stocks, warrants, and securities other than options, should be approved.[25]

IV. Discussion and Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6 and 11 of the Act.[26] The Commission believes that the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, the Commission believes that the proposed rule change is not contrary to the section 11(a) requirement that member transactions must be consistent with Commission requirements

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[16] CBOE Rule 8.8, which deals with the activities of market-makers, generally prohibits a member firm from acting in both a principal and agency capacity on the same business day with respect to any of the securities traded at a given station of the Exchange floor. Under the proposal, this restriction would be applicable to any of the securities traded subject to the rules in new chapter XXX, as well as any securities related to chapter XXX securities. For example, index options, market baskets, index participations, and index warrants based on the S&P 100 or the S&P 500 are all related to each other, so that a member could not act as a market maker and as a floor broker in any of these securities on the same business day. See proposed Interpretation and Policy .02 to Rule 8.8.

[17] Under the proposal, a two-sided market would consist of a current bid and a current offer at prices reasonably calculated, under existing circumstances, to contribute to the maintenance of a supply of and demand for such securities.

[18] In addition to the NYSE, the Amex and four regional exchanges impose restrictions on where their member firms may trade. See Amex Rule 5; Boston Stock Exchange, section 23 of chapter II; Midwest Stock Exchange, rule 9 of Article VIII; Pacific Stock Exchange Rule XIII; and Philadelphia Stock Exchange Rule 132.

[19] While the CBOE does not have off-board trading restrictions, it does have an exclusive license from S&P to trade options on the S&P 100 and 500 indexes. In this approval order, however, the Commission is not addressing the appropriateness of any limitations that may be imposed by the CBOE with regard to trading securities based upon the S&P's stock indexes that may arise in connection with any contractual relationships between the CBOE and S&P.

[20] The CBOE rules currently contain a book priority rule for the trading of options. See CBOE Rules 6.45(a) and 7.7.

[21] CBOE 7.4. This policy differs from most other exchanges which allow the public order book to accept orders not only from public customers, but also from professional floor traders trading for themselves and from brokerage firms trading for their own accounts.

[22] See letter from Richard A. Grasso, President and Chief Operating Officer, NYSE, to Richard C. Breeden, Chairman, SEC, dated July 23, 1990.

[23] See letter from Alger B. Chapman, Chairman and Chief Executive Officer, CBOE, to Richard C. Breeden, Chairman, SEC, dated August 7, 1990.

[24] See letter from Richard A. Grasso, President and Chief Operating Officer, NYSE, to Alger B. Chapman, Chairman and Chief Operating Officer, CBOE, dated August 16, 1990.

[25] On August 16, 1990, the CTA voted to accept the CBOE as a CTA Plan Participant. Upon becoming a CTA Plan Participant, the CBOE would be able to have quotes and trades disseminated over the CQS and the Consolidated Tape Service ("CTS"). In addition, the CBOE currently has an application pending with ITS for Participant status in the ITS plan.

[26] 15 U.S.C. 78f and 78k (1982).

regarding execution, priority, parity, and precedence and the maintenance of fair and orderly markets.

Most of the CBOE's proposed rules governing the trading of stocks, warrants, and other securities mirror the rules of existing national securities exchanges, and are equally acceptable for the CBOE.

Specifically, the CBOE's proposed rules relating to trading, sales practices, customer protection (such as suitability and disclosure requirements), and anti-fraud provisions for stocks are virtually identical to the rules of existing national securities exhanges. With regard to index warants, the CBOE has proposed the same regulatory approach as that of the exchanges that are trading index warrants. The CBOE intends to apply its options suitability standards, in Exchange Rule 9.9, to recommendations regarding index warrants. The Exchange also will recommend that index warrants be sold to customers whose accounts have been approved for options trading.[27] The Commission believes that by imposing special suitability requirements on transactions in index warrants, the CBOE has addressed potential public customer problems that could arise because of the derivative nature of these products. In addition, in order to list a specific index warrant, the CBOE has committed to file a separate proposed rule change under Rule 19b–4 for Commission review.[28] The Commission believes that the submission of these separate rule changes will provide it with an opportunity to determine if a particular index raises potential manipulation or other trading abuse concerns.

Further, the Commission is satisfied that the CBOE's proposed initial and maintenance criteria for listing stocks, warrants, bonds and debentures, currency and index warrants, and securities of foreign issuers, will ensure that only bona fide companies with sufficient financial resources to meet their financial obligations will list their securities on the Exchange.[29] These rules are substantially similar to those of the Amex. To the extent that CBOE's proposed rules are different, the Commission has found them also to be consistent with the Act.[30]

In addition, as noted above, the CBOE plans to trade stocks, warrants, and other non-options securities on a trading floor segregated from its options trading floor.[31] The Commission believes that physically separating the stock trading floor from the options trading floor should constitute an adequate safeguard to ensure that concerns regarding manipulation and market information abuses by CBOE members, which could result from trading options and stock underlying those options in physical proximity to each other, are minimal. As a new stock exchange, the CBOE is unlikely to be the primary market for the stocks it proposes to trade. As a result, CBOE floor participants are not likely to possess the material market information about those stocks that floor professionals on a primary exchange would likely have access to because of "time and place" advantages; that is, they are unlikely to possess at various times more market information at an earlier time than other market participants. Nevertheless, because the CBOE is the primary, or sole, market for most of the options on individual stocks it trades, maintaining a presence on the trading floor may present a floor participant with the advantage of having access to certain market information. Accordingly, the Commission believes that it is important that the CBOE stock and options floors be separated.[32]

The Commission also expects to CBOE to monitor carefully the trading on the Exchange of stocks and related options to prevent any abuse of market information or manipulation. The Commission is conditioning this approval order on the CBOE developing a surveillance program, prior to the commencement of stock trading, which is capable of detecting any problems in this area and which provides the safeguards necessary to prevent abuses that could result from the trading of stocks and related options in physical proximity to each other.[33] The Commission is further conditioning this approval order on the CBOE conducting surveillance of trading in stocks, warrants, and securities other than options through routine post-trade

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[27] See proposed Rule 30.50, Interpretation .02.

[28] The CBOE's proposed standards for the listing and trading on the Exchange of currency warrants are nearly identical to the current Amex standards in this area [see Amex Company Guide, section 106, and Amex rule 411, Commentary .01]. Like the Amex rules, the CBOE's proposed rules contain special suitability standards that must be met in order for the Exchange to trade currency warrants in customer accounts.

[29] The Commission notes that the CBOE's proposed new listing standards are substantially similar to those of the Amex and should ensure that only bona fide companies list on the Exchange. The Commission, however, currently is reviewing the list standards and policies of all the national securities exchanges in an effort to encourage the exchanges to adopt uniform listing criteria. The CBOE's proposed new listing standards will be included in the Commission's review in this area.

[30] The Commission does not believe that the comments submitted to the Commission by the NYSE urging the Commission to delay approval of the CBOE proposal until the NYSE can commence multiple listing of options have any merit. The NYSE asserts that the CBOE proposal should not be approved at the present time, but provides no reason for its position other than that it wishes to commence multiple listing of options before the CBOE order is approved and the CBOE commence the trading of securities other than options. The Commission does not believe that the Commission's approval of the CBOE's proposal imposes any unfair competitive burden on the NYSE, or any other market, which is not otherwise consistent with the Act. The Commission approved the NYSE's proposal to trade options in 1985. Moreover, in 1989, the Commission adopted Rule 19c–5 which allows each options exchange to multiply trade any new option class listed after January 22, 1990, and permits, from January 22, 1990, to January 21, 1991, each exchange to multiply trade up to ten previously listed options classes on an exchange-listed security. Rule 19c–f5 further provides that, subsequent to January 21, 1991, there will be no restrictions on options multiple trading. Separately, each options exchange has voluntarily agreed with a Commission request to defer multiple trading of previously listed options classes until February 1, 1991, while the exchanges continue their efforts to develop and implement an options market linkage. The Commission notes that the NYSE strongly supported a deferral in options multiple trading until an options linkage was built. As discussed below, the CBOE effectively has restricted side-by-side trading of options and their underlying stocks, thus alleviating any concerns that the CBOE's position as the predominant options exchange will provide it with any significant competitive advantage over competing stock markets. In particular, the Commission believes that the CBOE's establishment of an equity trading floor in a separate physical location from the options trading floor should preclude unfair access by CBOE options traders to information generated by the CBOE equity floor. In addition, the Commission believes that the CBOE's present surveillance capabilities should be sufficient to frustrate any manipulative schemes based on the potential to discern material, non-public equity market information and to effect a transaction in the derivative market prior to public dissemination of the equity market information.

[31] See note 14, *supra*. Because the physical separation of the stock trading and options trading floors is a critical element in the CBOE proposal, any decision by the CBOE to change the location of the stock trading floor relative to the options trading floor, or to modify the means of access between them, would require submission of a proposed rule change under Section 19(b) of the Act. The CBOE has agreed to submit a proposed rule change under Section 19(b) of the Act to the Commission prior to any modification to its plan to trade stocks in a separate location from the options trading floor. *See* letter from Robert P. Ackerman, Vice President, Legal Services, CBOE, to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, dated October 15, 1990.

[32] In 1985, the Commission approved a NYSE proposal to trade options on NYSE-listed stocks in a separate physical location from the equity trading floor. See Securities Exchange Act Release No. 21759 (February 14, 1985), 50 FR 7250 and NYSE Rules 750.80(a) and 758(a) and (b). More recently, in 1988, the Commission approved the trading on the Amex of options on Amex-listed stocks, concluding that side-by-side trading or integrated market-making issues did not arise because the Amex proposed to trade stocks and related options in physically separate locations. See Securities Exchange Act Release No. 26147 (October 3, 1988), 53 FR 39556.

[33] The CBOE has made a commitment to the Commission that, prior to the commencement of trading of stocks, warrants, and securities other than options, it will submit surveillance procedures to the Commission.

monitoring, intermarket surveillance, and the Exchange's own frontrunning circular.

Finally, the Commission finds good cause for approving Amendments No. 3, 4, 5, and 6 prior to the thirtieth day after the date of publication of notice of filing thereof. Amendment No. 3 amends Rule 30.22,[34] of chapter XXX, to provide that adjusted ITS bids or offers will be used to execute odd-lot market orders, instead of those market quotations in the roundlot market on the floor of the Exchange. This modification to the CBOE's proposed odd-lot rules would conform the CBOE odd-lot rules to the rules of the other existing national securities exchanges regarding the use of the ITS best bid or offer for executing odd-lot orders.[35] Amendments No. 4 and 5 are non-substantive amendments that clarify points that are contained already in the proposed rule change. For instance, Amendments No. 4 and 5 make clear that the Exchange's listing criteria are fixed requirements which are not discretionary in their application and that the CBOE will trade stocks and related options in separate trading locations. Amendment No. 6 amends proposed Rule 31.10 which, in the original rule filing, recommended that issuers maintain an audit committee composed of independent directors. In Amendment No. 6, the CBOE strengthens this proposed audit committee recommendation by making it a requirement that all issuers maintain an audit committee composed entirely of independent directors. The Commission believes that the CBOE's proposed requirement that issuers maintain completely independent directors is more effective than its prior proposed recommendation, and further believes that independent audit committees should enhance the relibility of financial disclosures and the credibility of financial information. Therefore, the Commission finds that accelerated approval of Amendments No. 3, 4, 5, and 6 is necessary in order for the Exchange to have the necessary rules in place before it begins the trading of stocks, warrants, and other securities.

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 3, 4, 5, and 6 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will be also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-90-8 and should be submitted by November 16, 1990.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[36] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

[FR Doc. 90-25325 Filed 10-25-90; 8:45 am]

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[34] Rule 30.22 was proposed in Amendment No. 2. See note 3 *supra*.

[35] See *e.g.*, NYSE Rule 124.

[36] 15 U.S.C. 78s(b)(2) (1982).

[37] 17 CFR 240.30-3(a)(12) (1989).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Pacific Stock Exchange, Inc.

October 22, 1990.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Mexico Equity & Income Fund, Inc.
Common Stock, $.001 Par Value (File No. 7-6295)
Compania de Telefonos de Chile S.A.
American Depositary Shares (File No. 7-6296)
Springs Industries, Inc.
Class A Common Stock, $.25 Par Value (File No. 7-6297)
NACCO Industries, Inc.
Class A Common Stock, $1.00 Par Value (File No. 7-6298)
Mountain Medical Equipment, Inc.
Common Stock, $.10 Par Value (File No. 7-6299)
Monarch Machine Tool Company
Common Stock, No Par Value (File No. 7-6300)
Latin American Investment Fund, Inc.
Common Stock, $.001 Par Value (File No. 7-6301)
Golden Valley Microwave Foods, Inc.
Common Stock, $.01 Par Value (File No. 7-6302)
European Warrant Fund, Inc.
Common Stock, $.001 Par Value (File No. 7-6303)
Church and Dwight Company, Inc.
Common Stock, No Par Value (File No. 7-6304)
Centex Corporation
Common Stock, $.25 Par Value (File No. 7-6305)
Cadence Design Systems, Inc.
Common Stock, $.01 Par Value (File No. 7-6306)
Brown Group, Inc.
Common Stock, $3.75 Par Value (File No. 7-6307)
Brown and Sharpe Manufacturing
Class A Common Stock, $1.00 Par Value (File No. 7-6308)
Banner Aerospace, Inc.
Primes, Scores & Units (File No. 7-6309)
Americus Trust for Xerox Shares
Primes, Scores & Units (File No. 7-6310)
Americus Trust for Union Pacific Shares
Primes, Scores & Units (File No. 7-6311)
Americus Trust for Sears Shares
Primes, Scores & Units (File No. 7-6312)
Americus Trust for Proctor & Gamble Shares
Primes, Scores & Units (File No. 7-6313)
Americus Trust for Mobil Shares
Primes, Scores & Units (File No. 7-6314)
Americus Trust for Merck Shares
Primes, Scores & Units (File No. 7-6315)
Americus Trust for Johnson & Johnson Shares
Primes, Scores & Units (File No. 7-6316)
Americus Trust for Hewlett-Packard Shares
Primes, Scores & Units (File No. 7-6317)
Americus Trust for General Motors Shares
Primes, Scores & Units (File No. 7-6318)
Americus Trust for Ford Shares
Primes, Scores & Units (File No. 7-6319)
Americus Trust for Eastman Kodak Shares
Primes, Scores & Units (File No. 7-6320)
Americus Trust for Chevron Shares
Primes, Scores & Units (File No. 7-6321)
Americus Trust for Bristol-Myers Shares
Primes, Scores & Units (File No. 7-6322)
Americus Trust for ARCO Shares
Primes, Scores & Units (File No. 7-6323)
Americus Trust for Amoco Shares
Primes, Scores & Units (File No. 7-6324)
Americus Trust for American Home Products Shares
Primes, Scores & Units (File No. 7-6325
Alberto Culver Company
Class B Common Stock, $.22 Par Value (File No. 7-6327)
ACME Cleveland Corporation
Common Stock, $1.00 Par Value (File No. 7-6328)
RJR Nabisco Holdings Corporation
Cumulative Convertible Preferred Stock, $.01 Par Value (File No. 7-6329)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 13, 1990, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the

Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-25329 Filed 10-25-90; 8:45 am]

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[Release No. 34-28558; File No. SR-PSE-90-34]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to the Adoption of Listing Standards and a Notice to the Membership for Contingent Value Rights

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 11, 1990, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The PSE has requested accelerated approval of the proposal. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend Exchange Rules 3.2 and 3.5 to provide listing and delisting standards applicable to Contingent Value Right ("CVRs").[1] The Exchange also proposes the adoption of a Notice to the Membership ("Notice") which will be distributed to members regarding the trading of CVRs.

[1] The exact text of the proposed listing standards and the notice to customers was attached to the rule filing as Exhibits A and B, respectively, and is available at the PSE and the Commission at the address noted in Item III below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regualtory organization has prepared summaries, set forth in section A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PSE is proposing to amend Exchange Rules 3.2 and 3.5 to provide listing standards to permit the listing of CVRs which are unsecured obligations of the issuer providing for a possible cash payment at maturity.[2] However, such payment, if any, is based upon the price performance of an affiliate's equity security.

At maturity, the holder of a CVR is entitled to a cash payment if the average market price of the related security is less than a pre-set target price. The target price is typically established at the time the CVR is issued. Conversely, should the average market price of the related equity security equal or exceed the target price, the CVR holder is not entitled to any cash payment at maturity.

Only CVRs issued by companies that meet the Exchange's financial listing criteria for size and earnings [3] and that have assets in excess of $100 million would be considered eligible for listing. The Exchange proposes to require minimum public distribution of 600,000 CVRs, together with a minimum of 1,200 public holders and an aggregate market value of $18,000,000. In addition, the maturity of the CVRs must be at least one year.

[2] The Commission has approved similar proposals by the New York ("NYSE"), American ("Amex"), and Midwest ("MSE") Stock Exchanges. *See* Securities Exchange Act Release No. 28072 (May 30, 1990), 55 FR 23166 (June 6, 1990) (adoption by the NYSE of listing standards for CVRs); Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8624 (March 9, 1990) (adoption by the Amex of listing standards for new hybrid products); and Securities Exchange Act Release No. 28143 (June 25, 1990), 55 FR 27317 (July 2, 1990) (adoption by the MSE of listing standards for CVRs).

[3] The PSE requires that, in order to list common stock on the Exchange, an issuer must have $1,000,000 in net tangible assets and $200,000 in pretax earnings for the two years preceding the application for listing.

The Exchange also proposes continued listing standards for CVRs which would require a minimum aggregate market value of publicly-held CVRs of $1,000,000. In addition, the Exchange will give consideration to delisting the CVRs if the related equity security to which cash payment at maturity is tied is delisted.

The Exchange will require that the membership provide its customers with a Notice that calls attention to the specific risks associated with CVRs. The Notice will require that CVR investors must be given an explanation of the special characteristics and risks of the CVRs and that transactions in CVRs be recommended only to investors whose accounts have been approved for options trading or after ascertaining that CVRs are otherwise suitable for the customer.

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purpose of this title or the administration of the exchange. Furthermore, the proposed rule change is consistent with section 11A(a)(1)(C)(ii) of the Act in that it will tend to assure fair competition among exchange markets and between exchange markets and markets other than exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and

arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–90–34 and should be submitted by November 16, 1990.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the PSE's proposal to provide listing standards for the listing of CVRs on the Exchange is consistent with the requirements of the Act and the rules and requirements thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) of the Act.[4] In particular, the Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade and not to permit unfair discrimination between customers, brokers, or dealers. In today's financial markets, innovative financial vehicles continues to be created that are issued and proposed for trading on exchange markets. Over the past several years, the Commission has approved listing criteria for various new products for trading on exchange markets, such as index warrants [5] and foreign currency warrants.[6] In addition, the Commission recently approved listing standards on the NYSE and MSE applicable to CVRs and listing standards on the Amex to accommodate new products, such as CVRs.[7] In response to these new products, the Commission has carefully identified and evaluated certain regulatory concerns which must be addressed by the exchange that proposes to list and trade these products.

The Commission believes that the PSE's proposal to establish listing criteria for CVRs addresses the special concerns raised by these new investment products. The proposed quantitative listing standards should ensure that only substantial companies capable of meeting their financial obligations issue CVRs. This is important in light of the contingent financial obligations created by these instruments, and should serve to protect investors and the public interest by ensuring that the companies listing CVRs on the Exchange have sufficient financial means to meet their settlement obligations.

In addition, the Exchange has proposed to distribute a Notice apprising member firms of the special characteristics, risks, and suitability obligations associated with CVRs and requiring members to provide their customers with the Notice. The Commission believes distribution of this Notice should provide the PSE with the ability to address any potential sales practice problems and questions that may arise in connection with these CVRs. Moreover, the Commission believes that use of this Notice will help ensure that only customers with an understanding of the risks attendant to the trading of CVRs trade these products on their brokers' recommendations. Finally, this Notice will alert members to the special disclosure and suitability obligations involved in this product and suggest that transactions in CVRs be recommended only to investors whose accounts have been approved for options trading or after ascertaining that CVRs are suitable for the customer.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. As discussed supra, the Commission has approved substantially similar proposals by the NYSE and the MSE, which both adopted listing standards and a membership circular for trading CVRs on those exchanges.[8] In addition, the Commission believes that the assets and earnings standards set by the PSE for issuers seeking to list CVRs will ensure that only bona fide companies capable of meeting their settlement obligations list CVRs on the Exchange. Finally, both the NYSE's proposal to list CVRs and the Amex's proposal to list new hybrid products were noticed and published for comment for the full statutory time period and no comments were received by the Commission on either proposal.[9]

It is therefore ordered, pursuant to section 19(b)(2) of the Act [10] that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 22, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–25381 Filed 10–25–90; 8:45 am]

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[File No. 22–20591]

Application and Opportunity for Hearing; American Airlines, Inc.

October 22, 1990.

Notice is hereby given that American Airlines, Inc. (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Commission that the trusteeship of The Connecticut National Bank ("CNB") under (a) each of up to six indentures expected to be qualified under the Act and (b) certain other indentures described below is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify CNB from acting as trustee under any of such indentures.

Section 310(b) of the Act provides, in part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has

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[4] 15 U.S.C. 78f (1982).

[5] *See* Securities Exchange Act Release No. 26152 (October 3, 1988), 53 FR 39832 (October 12, 1988) (approving File No. SR–Amex–87–27) (listing guidelines for foreign currency and index warrants) and Securities Exchange Act Release No. 27565 (December 22, 1989), 55 FR 376 (January 4, 1990) (File No. SR-Amex-89-22) (proposal to list index warrants based on the Nikkei Stock Average).

[6] *See* Securities Exchange Act Release No. 24555 (June 5, 1987), 52 FR 22570 (June 12, 1987) (File No. SR-Amex-87-15) (proposal to list warrants on foreign currencies).

[7] *See* Securities Exchange Act Release No. 28072 (May 30, 1990), 55 FR 23166 (June 6, 1990) (approving File No. SR-NYSE-90-15); Securities Exchange Act Release No. 28143 (June 25, 1990), 55 FR 27317 (July 2, 1990) (approving File No. SR-MSE-90-8); and Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8824 (March 8, 1990) (approving File No. SR-Amex-89-29).

[8] *See, supra* note 2.

[9] The MSE proposal to adopt listing standards and a membership circular for the trading of CVRs on the exchange was approved by the Commission on an accelerated basis on June 25, 1990. *See supra* note 2. No comments were received by the Commission regarding this proposal.

[10] 15 U.S.C. 78s(b)(2) (1982).

such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of such section provides, with certain exceptions, that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture under which any other securities of the same obligor are outstanding. However, pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of such obligor are outstanding, if the issuer shall have sustained the burden of proving on application to the Commission, and after opportunity for a hearing thereon, that trusteeship under the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as Trustee under any of such indentures.

The Applicant Alleges that:

1. The Applicant has filed five Registration Statements on Form S–3 covering the proposed issuance up to six series of 1990 Equipment Trust Certificates, to be designated as Series U through Z (the "Proposed Certificates").

2. Each series of the Proposed Certificates will be issued pursuant to a separate indenture (a "Proposed Indenture"), each expected to be qualified under the Act, among a banking institution, as trustee for an institutional investor acting as the equity participant (an "owner trustee"), the Applicant, as lessee, and an indenture trustee (the "Proposed Indenture Trustee"). The Applicant desires to appoint CNB as the Proposed Indenture Trustee under each such Proposed Indenture.

3. The proceeds from the sale of the Proposed Certificates will be used to provide long-term financing for a portion of the equipment cost of up to six Boeing 757–223 Aircraft or McConnell Douglas DC–9–82 Aircraft, each of which will be leased by the owner trustee to the Applicant.

4. Each series of the Proposed Certificates will be secured by a security interest in one of the aircraft and by the right of the owner trustee to receive rentals payable in respect of such aircraft by the Applicant under the applicable lease. No aircraft will be covered by more than one Proposed Indenture or by any other indenture, and the Proposed Certificates to be issued pursuant to any one Proposed Indenture will be separate from the proposed Certificates to be issued pursuant to any other Proposed Indenture.

5. CNB currently acts as indenture trustee under eight qualified indentures under which the Applicant's 1990 Equipment Trust Certificates, Series M through T are outstanding (the "July 1990 Qualified Indentures"). Each of the July 1990 Qualified Indentures relates to a separate leveraged lease transaction in which an owner trustee leases one Boeing 757–233 Aircraft or one McDonnell Douglas DC–9–82 Aircraft to the Applicant. Each such series of certificates is secured by a security interest in the aircraft to which the relevant July 1990 Qualified Indenture relates and by the right of the owner trustee to receive rentals on such aircraft from the Applicant.

6. CNB currently acts as indenture trustee under five qualified indentures under which the Applicant's 1990 Equipment Turst Certificates, Series H through L are outstanding (the "May 1990 Qualified Indentures"). Each of the May 1990 Qualified Indentures relates to a separate leveraged lease transaction in which an owner trustee leases one Boeing 757–223 Aircraft or one McDonnell Douglas DC–9–82 Aircraft to the Applicant. Each such series of certificates is secured by a security interest in the aircraft to which the relevant May 1990 Qualified Indenture relates and by the right of the owner trustee to receive rentals on such aircraft from the Applicant.

7. CNB currently acts as indenture trustee under three qualified indentures, under which the Applicant's 1990 Equipment Trust Certificates, Series E through G are outstanding (the "August 1989 Qualified Indentures"). Each of the August 1989 Qualified Indentures relates to a separate leveraged lease transaction in which an institutional investor acting as the equity participant leases one Boeing 757–223 Aircraft to the Applicant. Each such series of certificates is secured by a security interest in the aircraft to which the relevant August 1989 Qualified Indenture relates and by the right of the equity participant to receive rentals on such aircraft from the Applicant.

8. CNB currently acts as indenture trustee under four qualified indentures, under which the Applicant's 1990 Equipment Trust Certificates, Series A through D are outstanding (the "July 1989 Qualified Indentures"). Each of the July 1989 Qualified Indentures relates to a separate leveraged lease transaction in which an owner leases one McDonnell Douglas DC–9–82 or Boeing 757–223 Aircraft to the Applicant. Each such series of certificates is secured by a security interest in the aircraft to which the relevant July 19989 Qualified Indenture relates and by the right of the lower trustee to receive rentals on such aircraft from the Applicant.

9. CNB currently acts as indenture trustee (a "1988 Pass Through Trustee") under four qualified indentures under which the Equipment Note Pass Through Certificates, Series 1988–A are outstanding (the "1988 Qualified Indentures") and as indenture trustee under four separate leveraged lease indentures related to the 1988 Qualified Indentures (the "1988 Lease Indentures"). Each of the 1988 Lease Indentures relates to a separate leveraged lease transaction in which an owner trustee leases one McDonnell Douglas DC–9–82 Aircraft to the Applicant. In 1988, each owner trustee issued four series of loan certificates (the "1988 Equipment Notes") under each 1988 Lease Indenture to four separate grantor trusts. These grantor trusts in turn issued four series of Pass Through Certificates (the "1988 Pass Through Certificates") under the four separate 1988 Qualified Indentures. The 1988 Equipment Notes issued with respect to each 1988 Lease Indenture are secured by a security interest in the aircraft to which such 1988 Lease Indenture relates and by the right of the owner trustee to receive rentals on such aircraft from the Applicant. The Pass Through Certificates issued under the 1988 Qualified Indentures represent undivided interests in the 1988 Equipment Notes held by the related 1988 Pass Through Trustee.

10. CNB currently acts as Pass Through Trustee (a "1987 Pass Through Trustee") under four qualified indentures under which the Equipment Note Pass Through Certificates, Series 1987–A, are outstanding (the "1987 Qualified Indentures") and as indenture trustee under six separate leveraged lease indentures related to the 1987 Qualified Indentures (the "1987 Lease Indentures"). Each of the 1987 Lease Indentures relates to a separate leveraged lease transaction in which an owner trustee leases one McDonnell Douglas DC–9–82 Aircraft to the Applicant. In 1987, each owner trustee issued seven series of loan certificates (the "1987 Equipment Notes") under each 1987 Lease Indenture to seven separate grantor trusts. These grantor trusts in turn issued seven series of Pass Through Certificates (the "1987 Pass Through Certificates") under the seven separate 1987 Qualified Indentures. (To date, three series of 1987 Equipment Notes have matured, and the 1987 Pass Through Certificates issued by the three grantor trusts holding such Equipment Notes similarly matured and were paid at maturity. As a result, the three 1987

Qualified Indentures under which such 1987 Pass Through Certificates were issued terminated. Thus only four 1987 Qualified Indentures remain.) The 1987 Equipment Notes issued with respect to each 1987 Lease Indenture are secured by a security interest in the aircraft to which such 1987 Lease Indenture relates and by the right of the owner trustee to receive rentals on such aircraft from the Applicant. The Pass Through Certificates issued under the 1987 Qualified Indentures represent undivided interests in the 1987 Equipment Notes held by the related 1987 Pass Through Trustee.

11. CNB currently acts as indenture trustee under an indenture, dated as of October 15, 1986 (the "Other Indenture"), between CNB and an owner trustee that relates to a leveraged lease transaction in which the owner trustee, for the benefit of certain institutional investors acting as equity participants, issued in a private placement loan certificates to institutional investors acting as loan participants. The proceeds of the issuance of the loan certificates issued under the Other Indenture were used by the owner trustee to purchase one Boeing 767–223 Aircraft that was then leased by such owner trustee to the Applicant. The Applicant is not a party to the Other Indenture (only the owner trustee as issuer of the loan certificates and CNB are parties), but the Applicant's unconditional obligation to make rental payments under the lease relating to such Other Indenture is the only credit source for principal and interest payments on the loan certificates. The loan certificates issued under the Other Indenture are secured by a security interest in the aforementioned Boeing 767–223 Aircraft and the right of the owner trustee to receive rentals on such aircraft for the Applicant.

12. CNB's acting as trustee under the Proposed Indentures, the July 1990 Qualified Indentures, the May 1990 Qualified Indentures, the August 1989 Qualified Indentures, the July 1989 Qualified Indentures, the 1988 Qualified Indentures, the 1988 Lease Indentures, the 1987 Qualified Indentures, the 1987 Lease Indentures or the Other Indenture does not present any likelihood of a material conflict of interest within the meaning of section 310(b)(1) of the Act. Each series of the Proposed certificates will be secured under the relevant Proposed Indenture by collateral specific to such Proposed Indenture, and each series of loan certificates outstanding under the July 1990 Qualified Indentures, the May 1990 Qualified Indentures, the August 1989 Qualified Indentures, the July 1989 Qualified Indentures, the 1988 Qualified Indentures, the 1988 Lease Indentures, the 1987 Qualified Indentures, the 1987 Lease Indentures and the Other Indenture will be secured under the relevant indenture by collateral specific to such indenture. None of the Proposed Indentures, the July 1990 Qualified Indentures, the May 1990 Qualified Indentures, the August 1989 Qualified Indentures, the July 1989 Qualified Indentures, the 1988 Qualified Indentures, the 1988 Lease Indentures, the 1987 Qualified Indentures, the 1987 Lease Indentures or the Other Indenture provides for cross-collateralization. The collateral relating to each series of the Proposed Certificates is not subject to the claims of holders of any Other Proposed Indentures, the May 1990 Qualified Indentures, the August 1989 Qualified Indentures, the July 1989 Qualified Indentures, the 1988 Qualified Indentures, the 1988 Lease Indentures, the 1987 Qualified Indentures, the 1987 Lease Indentures or the Other Indenture. None of the collateral relating to the July 1990 Qualified Indentures, the May 1990 Qualified Indentures, August 1989 Qualified Indentures, the July 1989 Qualified Indentures, the 1988 Qualified Indentures, the 1988 Lease Indentures, the 1987 Qualified Indentures, the 1987 Lease Indentures or the Other Indenture is subject to the claims of holders of the Proposed Certificates.

13. CNB's powers as trustee in respect of any default under any Proposed Indenture are not restricted by the provisions of any other Proposed Indenture, the July 1990 Qualified Indentures, the August 1989 Qualified Indentures, the July 1989 Qualified Indentures, the 1988 Qualified Indentures, the 1988 Lease Indentures, the 1987 Qualified Indentures, the 1987 Lease Indentures or the Other Indenture.

14. The Applicant is not in default in any respect under any of the July 1990 Qualified Indentures, the May 1990 Qualified Indentures, the August 1989 Qualified Indentures, the July 1989 Qualified Indentures, the 1988 Qualified Indentures, the 1988 Lease Indentures, the 1987 Qualified Indentures, the 1987 Lease Indentures or the Other Indenture and will not, at the time of execution thereof, be in default in any respect under any of the Proposed Indentures.

15. Such differences as exist among the Indentures referred to herein and the respective obligations of the Company as obligor are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any of the Indentures.

The applicant waives notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission with respect to the application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application which is on file in the Office of the Commission's Public Reference Section, File No. 22–20591, 450 Fifth Street, NW., Washington DC 20549.

Notice is further given that any interested persons may, no later than November 16, 1990, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Jonathan G. Katz, Secretary, Securities and Exchange Commission 450 Fifth Street, NW., Washington DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–25326 Filed 10–25–90; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–17811; 811–4967]

First Fidelity Investment Trust for Retirement Accounts; Application for Deregistration

October 22, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: First Fidelity Investment Trust For Retirement Accounts.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application on Form N–8F was filed on August 22, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 19, 1990 and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicant, 550 Broad Street, Newark, New Jersey 07192.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Staff Attorney, (202) 272–3035, or Max Berueffy, Branch Chief, (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 738–1400).

Applicant's Representations

1. Applicant is an open-end, diversified management investment company organized as a New Jersey collective investment trust. Applicant consists of one series of units of beneficial interest, entitled the Stock Fund.

2. On December 31, 1986, Applicant filed a registration statement on Form N–1A to register an indefinite number of its units of beneficial interest. The registration statement, as amended by two pre-effective amendments, became effective on March 16, 1987, and Applicant commenced its initial public offering immediately thereafter. All of Applicant's required N–SAR filings have been made, and such filings will continue to be made until Applicant is deregistered under the Act.

3. Applicant ceased legal existence under the banking laws of New Jersey on June 15, 1990 upon the transfer of all its assets and liabilities to FFB Funds Trust, a registered investment company, pursuant to an Agreement of Sale and Plan of Reorganization (the "Plan"), and upon notifying the Office of the Comptroller of the Currency of its termination as a collective investment trust.

4. On January 25, 1990, the Supervisory Committee of Applicant approved the Plan under which all of the assets and certain liabilities of Applicant would be transferred to FFB Funds Trust on June 15, 1990. Proxy materials relating to the Plan were mailed to unitholders on or about April 12, 1990, and were filed with the Commission. The unitholders of Applicant approved the Plan on May 29, 1990 by a majority vote.

5. As of June 15, 1990, Applicant had 140,371.702 units of beneficial interest outstanding, with an aggregate net asset value of $1,788,552.29, and a per unit net asset value of $12.74.

6. Purusant to the Plan, the Stock Fund on June 15, 1990 transferred to FFB Equity Fund, a series of FFB Funds Trust, all of its portfolio securities and other assets. In consideration therefor, FFB Equity Fund assumed certain identified liabilities of the Stock Fund, and delivered to the Stock Fund a number of full and fractional shares of beneficial interest of FFB Equity Fund. Those shares then were distributed pro rata to the Stock Funds's unitholders of record as of June 15, 1990 to liquidate their interests in the Stock Fund. The voting rights of shares of FFB Equity Fund are substantially similar to those of Stock Fund shares. No brokerage commissions were paid in connection with the reorganization.

7. The expenses of the reorganization amounted to approximately $25,000, and were allocated between the funds involved in the application. Applicant's share of those expenses was $18,000.

8. Applicant has no assets, debts, or securityholders. There is no securityholder of Applicant to whom a distribution in complete liquidation of its interest has not been made.

9. Apart from the reorganization pursuant to the Plan, Applicant has not, within the last 18 months, transferred any of its assets to a separate trust, the beneficiaries of which were or are securityholders of Applicant.

10. Applicant is not a party to any litigation or administrative proceeding.

11. Applicant is not now engaged, and does not propose to engage, in any business activity than that needed to windup its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–25327 Filed 10–25–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25176]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 19, 1990.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 13, 1990 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Utilities Associates, et al. (70–7740)

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, and EUA Power Corporation ("EUA Power"), 40 Stark Street, P.O. Box 326, Manchester, New Hampshire 03105, its wholly-owned public-utility subsidiary company, have filed a post-effective amendment to their application-declaration under sections 6(a), 7 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

By order dated April 30, 1990 (HCAR No. 25080), EUA and EUA Power were authorized to engage in various financing transactions intended to enable EUA Power to meet its interest and other obligations and working capital requirements, for the period through May 15, 1991.

EUA Power now proposes to borrow the proceeds from tax exempt solid waste revenue bonds ("Bonds") to be

issued by the Industrial Development Authority of the State of New Hampshire ("NHIDA") in an aggregate amount of up to $25 million. The proceeds of the Bonds would be loaned by the NHIDA to EUA Power pursuant to a Loan and Trust Agreement ("Trust Agreement") with the NHIDA and Shawmut Bank, N.A., as trustee ("Trustee"), and be used to reimburse EUA Power for certain solid waste disposal expenditures. EUA will make payments to the Trustee in an amount equal to the payment then coming due on the Bonds.

To ensure the payment of principal of, premium, if any, and interest on the Bonds (and payment of purchase price upon tender of the Bonds for mandatory purchase), Citibank, N.A. ("Bank") will issue an irrevocable letter of credit ("Letter of Credit") in an amount not to exceed $26 million. EUA Power proposes to execute an agreement ("Reimbursement Agreement") with the Bank whereby EUA Power will agree to reimburse the Bank for all draws on the Letter of Credit and to pay the Bank's related fees. In addition, EUA proposes to enter into a related guaranty agreement pursuant to which EUA will guarantee payment of EUA Power's obligations to the Bank of up to $26 million.

The Bonds will have a 30 year nominal maturity with no principal amortization and will initially bear interest as weekly variable rate demand notes ("Weekly Mode"), but all or part of the Bonds may be converted or reconverted to other interest modes at the option of EUA Power. The other interest modes are for periods of from one to 270 days ("Flexible Mode"), one year or any multiple thereof ("Multiannual Mode"), and the remaining term of the Bond issue ("Fixed Rate Mode"). The interest rate in each case will be set by Goldman, Sachs & Co. ("Remarketing Agent"), but in no event will the interest rates in effect from time to time for any mode exceed 12% without further Commission authorization. When the Bonds are in the Weekly Mode, the bondholders will have the right at predetermined dates to tender their Bonds to the Trustee for mandatory purchase at 100% of principal amount plus accrued interest. In addition, EUA Power may convert or reconvert the Bonds, or any portion thereof, which are in the Weekly Mode, Flexible Mode, or Multiannual Mode to any other such mode or the Fixed Rate Mode. As a condition to conversion to the Weekly Mode or the Flexible Mode, EUA Power must deliver a substitute letter of credit meeting the requirements of the Trust Agreement.

In addition to various redemption rights, the Bonds will be subject to mandatory tender by the bondholders upon certain conditions including the expiration of the rate periods under the Flexible and Multiannual Modes.

EUA Power also requests an exception from the competitive bidding requirements of Rule 50 pursuant to Subsection (a)(5) thereunder regarding EUA Power's obligations under the Trust Agreement and the Reimbursement Agreement.

Arkansas Power & Light Company (70-7802)

Arkansas Power & Light Company ("AP&L"), 425 West Capitol, 40th Floor, Little Rock, Arkansas 72201, an electric utility subsidiary company of Entergy Corporation, a registered holding company, has filed an application under Sections 9(a) and 10 of the Act.

AP&L proposes, through December 31, 1991, to enter into one or more installment sale agreements ("Agreement") with Pope County, Arkansas ("County"), concerning the construction, installation, equipping, financing, sale and reacquisition of solid waste disposal facilities ("Facilities") at AP&L's Nuclear One Generating Station located in the County.

Under the Agreement, the County may issue one or more series of its tax exempt revenue bonds ("Solid Waste Disposal Bonds") in an aggregate principal amount not to exceed $120 million with a maturity date from 5 to 30 years. The proceeds from the Solid Waste Disposal Bonds will be deposited by the County with the trustee ("Trustee") under one or more indentures ("Indenture") entered into between the County and the Trustee pursuant to which Indenture the Solid Waste Disposal Bonds are issued, and the proceeds are accrued. The proceeds, net any underwriters' discount or other expenses payable from the proceeds, will be applied by the Trustee to the costs of, or to permanently finance on a tax exempt basis, the construction, acquisition, installation, or equipping of the Facilities.

AP&L also proposes to convey the Facilities to the County for cash, and to reacquire the Facilities under the Agreement requiring AP&L to pay as the purchase price installments in such amounts, together with other monies held by the Trustee under the Indenture for that purpose, as to enable the County to pay, when due, the principal or purchase price of, the premium, if any, and the interest on the Solid Waste Disposal Bonds. Under the Agreement, AP&L will also be obligated to pay certain fees incurred in the transactions.

In order to obtain security for holders of the Solid Waste Disposal Bonds, AP&L may seek to obtain the authentication of one or more new series of first mortgage bonds ("Bonds"). The Bonds would be issued on the basis of unfunded net property additions and/or previously retired Bonds. AP&L believes that the possible issuances and pledge of the Bonds to the Trustee under the Indenture will meet the standards for an exemption from section 6(a) of the Act provided by Rule 52 thereunder. However, AP&L states that if it is not able to meet the capitalization tests provided in subsection (a)(3) of Rule 52 in connection with the issuance and pledge of all the Bonds, AP&L would file an amendment to this application seeking approval under sections 6(a) and 7 of the Act to issue and pledge such additional Bonds to the Trustee under the Indenture. Moreover, in such event, AP&L would also request an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) in connection with the issuance of the Bonds.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-25324 Filed 10-25-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17810; 812-7332]

T. Rowe Price California Tax-Free Trust, et al.; Notice of Application

October 19, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: T. Rowe Price California Tax-Free Trust on behalf of the California Tax-Free Bond Fund, T. Rowe Price State Tax-Free Trust on behalf of the Maryland Tax-Free Bond Fund and the New York Tax-Free Bond Fund, T. Rowe Price Tax-Free High Yield Fund, Inc., T. Rowe Price Tax-Free Income Fund, Inc., and T. Rowe Price Tax-Free Short-Intermediate Fund, Inc. (the "Tax-Free Funds"); T. Rowe Price Capital Appreciation Fund, T. Rowe Price Equity Income Fund, T. Rowe Price Growth & Income Fund, Inc., T. Rowe Price Growth Stock Fund, Inc., T. Rowe Price High Yield Fund, Inc., Institutional International Funds, Inc., T. Rowe Price

Index Trust, Inc., T. Rowe Price International Equity Fund, Inc., T. Rowe Price International Funds, Inc., T. Rowe Price New America Growth Fund, T. Rowe Price New Era Fund, Inc., T. Rowe Price New Horizons Fund, Inc., T. Rowe Price New Income Fund, Inc., T. Rowe Price Science & Technology Fund, Inc., T. Rowe Price Overnight Bond Fund, Inc., T. Rowe Price Small-Cap Value Fund, Inc. (the "Taxable Funds"); T. Rowe Price U.S. Treasury Funds, Inc. on behalf of the U.S. Treasury Intermediate Fund and U.S. Treasury Long-Term Fund, and T. Rowe Price GNMA Fund (the "Treasury Funds") (the Tax-Free Funds, the Taxable Funds, and the Treasury Funds are collectively referred to as the "Funds"); T. Rowe Price Associates, Inc. ("Price Associates"), Rowe Price-Fleming International, Inc. ("Price-Fleming" and collectively with Price Associates, the "Advisers"); and all future management investment companies, other than money market funds or funds using the amortized cost or penny rounding method of valuation, advised by Price Associates, Price-Fleming, or any future investment adviser or subadviser which is a direct or indirect wholly-owned subsidiary of Price Associates or Price-Fleming.

RELEVANT ACT SECTIONS: Section 17(d) and rule 17d–1.

Summary of Application: Applicants seek an order permitting the Funds to participate in joint accounts designed to pool cash balances and reserves. Applicants seek to establish three joint accounts: the Commercial Paper Joint Account, which will invest in overnight commercial paper; the Treasury Joint Account, which will invest in repurchase agreements with banks or brokerage houses; and the Tax-Free Joint Account, which will invest in tax-exempt daily variable rate demand notes.

FILING DATE: The application was filed on May 15, 1989 and amended on February 8, 1990 and July 25, 1990.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 15, 1990, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 100 East Pratt Street, Baltimore, MD 21202.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504–2263, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch or by contacting the SEC's commercial copier at (800) 231–3282 (in Maryland (301) 738–1400).

Applicants' Representations

1. The Funds comprise most of the investment company complex known as T. Rowe Price Mutual Funds. Each Fund is registered under the Act as an open-end management investment company.

2. In the normal course of business, each Fund frequently has uninvested cash balances at the end of its business day. Each fund normally invests this otherwise uninvested cash in overnight securities which mature and pay interest on the following business day. The Funds enter into these investments because (a) they provide additional income to the Funds, and (b) they allow the Funds to maintain the liquidity they require in case any Fund shareholders wish to redeem their shares. At the present time, each Fund makes its own overnight investments and bears the transaction costs of making such investments. This has resulted in certain inefficiencies, and has limited the return which the Funds achieve.

3. The Funds now wish to establish three Joint Accounts into which they will be able to deposit their uninvested cash: The Commercial Paper Joint Account, which will invest in overnight commercial paper; the Treasury Joint Account, which will invest in repurchase agreements with banks or brokerage houses; and the Tax-Free Joint Account, which will invest in tax-exempt daily variable rate demand notes ("Daily VRDNs"). The Joint Accounts will invest only in securities with an overnight, over-the-weekend, or over-the-holiday maturity, or, in the case of the Tax-Free Joint Account, Daily VRDNs with a demand feature that allows a Fund to obtain the full payment of principal and interest on a same-day basis (collectively, "overnight investments").

4. At the end of the business day, each Fund will have the option of depositing its uninvested cash in one of the Joint Accounts. Each Joint Account will then invest in one or more large overnight investments. No Fund will be required to participate in a Joint Account. Each Fund will have the option to continue investing in its own overnight investments.

5. The types of investments proposed for each Joint Account are exactly the types of investments made currently by the individual participating Funds. Selection of an overnight investment for the Joint Accounts will be made on the same basis (creditworthiness of the issuer, yield, and liquidity) as selection of an overnight investment for any participating Fund. However, because the overnight investments will be made jointly, the transaction costs will be reduced, and because a larger amount of cash will be available for fewer investments, there is the possibility that the interest earned on the investments will be higher.

6. Each Fund will participate in the Joint Accounts on the same basis as every other Fund. Each Fund will also participate in the Joint Accounts in conformity with its investment objections and restrictions.

7. The Advisers will have no monetary participation in the account, but will be responsible for investing amounts in the Jount Accounts, establishing accounting and control procedures, and ensuring the equal treatment of each Fund.

8. The Commercial Paper Joint Account will invest only in interest bearing or discounted commercial paper, including dollar denominated commercial paper of foreign issuers, which matures and pays interest daily. Only the taxable Funds, which are presently the only Funds authorized by their investment policies to invest in commercial paper, will be allowed to invest in the Commercial Paper Joint Account. All such investments will satisfy the investment criteria of any participating Fund as to yield, quality, and liquidity.

9. Commercial paper generally pays a higher rate of interest than repurchase agreements secured by U.S. government obligations, although this higher yield is generally accompanied by a higher degree of risk. Applicants manage the higher risk by investing only in commercial paper which is on their approved list. The one-day maturity of the commercial paper which will be eligible for the Commercial Paper Joint Account also mitigates the credit risk of such investments. By investing only in commercial paper issued by persons on the approved list, applicants believe that

the existence of the Commercial Paper Joint Account will not increase the investment risk of any of the Taxable Funds.

10. The Treasury Joint Account will invest only in repurchase agreements collateralized by U.S. Government obligations,i.e., obligations issued or guaranteed as to principal and interest by the Government of the United States. Both the Treasury Funds and the taxable Funds will be permitted to deposit their otherwise uninvested cash in the Treasury Joint Account because the Funds in these two groups are authorized by their individual investment policies to invest in repurchase agreements secured by U.S. Government obligations.[1]

11. With regard to the Taxable Funds, the decision whether to invest in the Commercial Paper Joint Account or the Treasury Joint Account will be made by the Adviser. This decision will be made by comparing the yield and liquidity of the repurchase agreement and the creditworthiness of its issuer with the yield, quality, and liquidity of the available commercial paper.

12. Each of the Taxable and Treasury Funds has established the same minimum standards for repurchase transactions. These include credit worthiness standards for both the issuers of the repurchase agreements and the collateral. The Funds also require that the repurchase agreements be fully collateralized at all times. The collateral requirement on overnight repurchase agreements is 101 percent.

13. The funds will not enter into repurchase agreements with their custodian banks.

14. The Tax-Free Joint Account will invest only in daily VRDNs. Because Daily VRDNs are tax-free securities, and because only the Tax-Free Funds are authorized by their investment policies to invest in such securities, only the Tax-Free Funds will be allowed to invest in the Tax-Free Joint Account.[2]

15. Daily VRDNs are tax-exempt municipal obligations which contain a variable or floating interest rate and an unconditional right of demand to receive payment of the unpaid principal and accrued interest upon a same day notice period. A variable rate instrument subject to a same-day demand feature is deemed to have a maturity equal to the longer of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand. The interest rate adjustments for Daily VRDNs are priced to reflect current market demand for such securities.

16. The demand feature of Daily VRDNs is backed by a credit facility. Most Daily VRDNs require a direct pay, irrevocable, bank letter of credit to ensure immediate liquidity for the investor, to provide for a more uniform aftermarket for remarketing efforts, and to receive a high credit rating from one or more of the major rating services. Only those issuers whose underlying credit is rated as high quality by the rating services are able to issue Daily VRDNs backed only by a line of credit.

17. Although each Joint Account will seek to make only one overnight investment, it may be necessary to make more than one overnight investment because many of the funds are subject to section 5(b) of the Act, which limits to 5% the assets that may be invested in any single issuer (other than U.S. governmental issuers). When a Fund subject to the 5% restriction invests more than 5% of its assets in a Joint Account, the Joint Account will have to make more than one overnight investment in order to avoid causing such Fund to violate its 5% restriction.

Applicants' Legal Analysis

1. Each Fund, by participating in one or more of the proposed Joint Accounts, and the Advisers, by managing the proposed Joint Accounts, could be deemed to be "joint participant[s] * * * in a transaction" within the meaning of section 17(d)(1) of the Act, and the proposed Joint Accounts could be deemed to be "joint enterprise[s] or other joint arrangement[s]" within the meaning of rule 17d–1 under the Act.

2. The Board of Directors/Trustees of each Fund has considered the proposed Joint Accounts and has determined that the Fund will benefit by participating in the Joint Accounts for the following reasons:

(a) Due to the pooled nature of the investments, the transaction costs are expected to be reduced,

(b) Due to the larger size of the investments being made, the terms of the investments are expected to be more favorable, and

(c) Due to the reduction in the number of trades, the potential for errors is expected to be reduced.

3. The proposed method of operating the Joint Accounts, as discussed herein, will not result in conflicts of interest between any of the Funds or between a Fund and its Adviser. Applicants believe that the operation of the Joint Accounts will be free of any inherent bias favoring one Fund over another.

4. Although the Adviser will gain some benefit through administrative convenience and some possible reduction in clerical costs, the primary beneficiaries will be the Funds because the Joint Accounts will be a more efficient way of administering daily investment transactions.

5. Applicants believe that future participation in the Joint Accounts by one of more Funds which do not presently exist or are not currently in operation will be desirable. Applicants represent that future Funds will be required to participate in the Joint Accounts on the same terms and conditions as the existing Funds have set forth herein.

6. The sole differences between this application and orders previously granted by the Commission to allow the establishment and operation of Joint Accounts for the pooling of cash reserves are that: (a) Applicants will establish three accounts; (b) two of the Joint Accounts will be allowed to invest in overnight investment other than repurchase agreements collateralized by U.S. government securities; and (c) the Taxable Funds will be allowed to invest in either of two Joint Accounts. Applicants do not regard these differences as material for the reasons discussed below.

7. The existence of more than one Joint Account is a function of the type of investments to which certain Funds are limited. Thus the Tax-Free Funds seek to invest only in securities which pay interest not subject to federal income tax. As a result, an investment in an account that invests in taxable instruments would not be appropriate. Similarly, the Treasury Funds may not invest in the Commercial Paper Joint Accounts because they are limited to investments guaranteed as to principal and interest by the U.S. Government, including repurchase agreements secured by such securities. Each Taxable Fund must determine, based on considerations of yield, liquidity, and creditworthiness, whether to invest in

[1] T. Rowe Price Growth Stock Fund, Inc., T. Rowe Price New Horizons Fund, Inc., and T. Rowe Price New Era Fund, Inc., all three of which are Taxable Funds, will not be able to participate in the Treasury Joint Account because their investment policies prohibit investments in repurchase agreements. If any of these Funds change their fundamental policies to allow for investments in repurchase agreements, they will be allowed to participate in the Treasury Joint Account in the same manner as the other Taxable and Treasury Funds.

[2] It is presently contemplated that T. Rowe Price State Tax-Free Trust and T. Rowe Price California Tax-Free Trust will not participate in the Tax-Free Joint Account, or any other Joint Account, because each portfolio within these two trusts is state-specific and only invests in securities which enjoy tax-exempt status under specific states.

repurchase agreements or commercial paper. Commercial paper may entail a slightly higher degree of risk than repurchase agreements. Thus, certain Taxable Funds may choose the Treasury Joint Account over the Commercial Paper Joint Account. Other Funds may decide to invest their reserves intended for overnight investment in the Commercial Paper Joint Account because of its potentially higher yield. In either case, there is no conflict of interest for the Advisers in making this decision and no Fund is disadvantaged by the existence of two Joint Accounts in which to invest.

8. Applicants believe that the Commercial Paper Joint Account and the Tax-Free Joint Account will generate savings for the Taxable and Tax-Free Fund, respectively. Although the savings for the Tax-Free Funds are not great, such savings should increase over time as the size of the Tax-Free Funds increases. Further, given the protection afforded by the conditions under which the Joint Accounts will operate, there does not seem to be any valid regulatory purpose for denying the Tax-Free Funds even a small degree of savings. For the Treasury Funds, applicants submit that the prospect of future savings is a sufficient basis to grant relief given the protection of the below stated conditions.

9. The type of investments proposed for each Joint Account are exactly the types of investments made currently by the individual participating funds. Selection of an overnight investment for the Joint Accountts will be made on the same basis (creditworthiness of the issuer, yield and liquidity) as selection of an overnight investment for any participating Funds, except that the Joint Accounts, because they will have a greater asset base, may have greater flexibility in seeking higher yielding overnight investments. Accordingly, applicants see no basis for distinguishing the Commercial Paper Joint Account, which will invest in overnight commercial paper, and the Tax-Free Joint Account, which will invest in Daily VRDNs, from the joint accounts previously authorized by the above-referenced Commission orders which invest solely in repurchase agreements.

Applicants' Conditions

The Joint Accounts will operate subject to the following conditions:

1. Three separate custodial cash accounts will be established. After the conclusion of its daily trading activity, each Fund will transfer the cash it wishes to invest in a Joint Account into one or more such accounts. The accounts will not be distinguishable from any other accounts maintained by a Fund with its custodian bank except that the Funds' money will be deposited on a commingled basis. The account will not have any separate existence which will have indicia of a separate legal entity. The sole function of the account will be to provide a convenient way of aggregating individual transactions.

2. Cash in the Joint Account will be invested in:

(a) For the Commercial Paper Joint Account, interest bearing or discounted commercial paper with a duration not to exceed one business day and satisfying the uniform standards set by the Taxable Funds for such investments;

(b) For the Treasury Joint Account, repurchase agreements with a duration not to exceed one business day, collateralized by U.S. Government obligations, and satisfying the uniform standards set by the Taxable Funds or Treasury Funds, respectively, for such investments; or

(c) For the Tax-Free Joint Account, Daily VRDNs with a same-day demand feature and satisfying the uniform standards set by the Tax-Free Funds for such investments.

3. All investments held by the Joint Accounts will be valued on the basis of current market value.

4. Securities purchased by the Joint Accounts will be rated A2 or A1/SP–1 or better by Standard and Poor's, P2 or MIG–2/V–MIG2 or better by Moody's, (depending on whether the security is taxable or tax-free) or, if unrated, will have a rating of equivalent quality as determined by the advisers under the supervsion of the boards of directors/trustees of the applicable Funds. These rating standards will not be changed without first obtaining an amendment of any order issued on the application.

5. In order to assure that there will be no opportunity for one Fund to use any part of a balance of a Joint Account credited to another Fund, no Fund will be allowed to create a negative balance in a Joint Account for any reason, although it will be permitted to draw down its entire balance at any time. A Fund's decision to invest in a Joint Account will be solely at the Fund's option. No Fund will be obligated to invest in the Joint Accounts or maintain any minimum balance therein. A Fund may withdraw all or a portion of its investment in a Joint Account at any time. In addition, each Fund will retain the sole rights of ownership of any of its assets invested in the Joint Accounts, including interest payable on such assets.[3] Each Fund's investment in a Joint Account will be documented daily on the books of each Fund as well as on the books of the Funds' custodian. Each Fund's liability on any overnight investment purchased by a Joint Account will be limited to that Fund's portion of such overnight investment.

6. Each Fund will participate in the income earned or accrued in the Joint Account in which it participated, including all instruments held by the Joint Account, on the basis of the Fund's percentage of the total amount in the Joint Account on any day represented by its share of the Joint Account.

7. The Advisers will administer the investment of the cash balances in and operation of the Joint Account as part of their duties under their existing or any future investment advisory contracts with each Fund and will not collect any additional fee for the management of the Joint Accounts. (The Advisers will collect fees in accordance with each Fund's respective investment advisory agreement.)

8. The Boards of Directors/Trustees of the Funds will evaluate the Joint Accounts' arrangements annually, and will continue the Joint Accounts only if they determine that there is a reasonable likelihood that the Joint Accounts will benefit the Funds and their shareholders.

9. The administration of the Joint Accounts will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–25328 Filed 10–25–90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02–0472]

Croyden Capital Corp.; Surrender of License

Notice is hereby given that Croyden Capital Corporation, 45 Rockefeller Plaza, New York, New York 10111 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (The Act). Croyden Capital Corporation was

[3] Applicants believe that a Fund's investment in a Joint Account will not be subject to the claims of creditors (whether brought in bankruptcy, insolvency, or other legal proceedings) of any other Fund participating in the Joint Account

licensed by the Small Business Administration on May 23, 1984.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on October 3, 1990, and, accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 17, 1990.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 90-25332 Filed 10-25-90; 8:45 am]

BILLING CODE 8025-01-M

[License No. 05/05-0105]

JRM Capital Corp.; License Surrender

Notice is hereby given that JRM Capital Corporation, 13900 Broadway Avenue, Cleveland, Ohio 44125-9940 has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (Act). JRM Capital Corporation was licensed by the Small Business Administration on September 18, 1975.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on September 24, 1990, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: October 18, 1990.

Bernard Kulik,

Associate Administrator for Investment.

[FR Doc. 90-25333 Filed 10-25-90; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended October 19, 1990

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47215.
Date filed: October 15, 1990.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 433—Amending Resolution 021H—Special rules for sale of Air Transportation/Brazil.
Proposed Effective Date: December 1, 1990.

Docket Number: 47218.
Date filed: October 19, 1990.
Parties: Members of the International Air Transport Association.
Subject: Expedited South Atlantic-Europe/Middle East.
Proposed Effective Date: November 1, 1990.

Docket Number: 47219.
Date filed: October 19, 1990.
Parties: Members of the International Air Transport Association.
Subject: TC3 Reso/P 0399 Expedited Resos R-1 To R-29.
Proposed Effective Date: November 1, 1990.

Docket Number: 47220.
Date filed: October 19, 1990.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/P 0885 Expedited Within Europe R-1—R-9 et al.
Proposed Effective Date:

Docket Number: 47221.
Date filed: October 19, 1990.
Parties: Members of the International Air Transport Association.
Subject: SNATC/1931 dated October 11, 1990 Report—Resolution 015 Meeting.
Proposed Effective Date: December 1, 1990.

Docket Number: 47222.
Date filed: October 19, 1990.
Parties: Members of the International Air Transport Association.
Subject: COMP Meet/P 0182 dated October 11, 1990 Report COMP Fares 0481 dated October 10, 1990 Tables—USA Add-ON Amounts.
Proposed Effective Date: December 1, 1990.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 90-25338 Filed 10-25-90; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended October 19, 1990

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each Application. Following the Answer period DOT may process the Application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 45188.
Date filed: October 19, 1990.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 16, 1990.

Description

Amendment No. 1 to the Application of Lineas Aereas Trans Costa Rica, S.A. pursuant to section 402 of the Act and subpart Q of the Regulations, requests authority to operate scheduled as well as non-scheduled waybilled traffic between San Jose, Costa Rica, on the one hand, and Miami, Florida; Houston, Texas; San Juan, Puerto Rico; New York. Newark; and Los Angeles, California, on the other. In addition, LAT seeks authority to operate charters pursuant to the provisions of part 212 of the Department's Regulations.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 90-25339 Filed 10-25-90; 8:45 am]

BILLING CODE 4910-62-M

[Order 90-10-31 Docket No. 47223]

Order Instituting Miami-Cancun Service Proceeding

AGENCY: OST, Department of Transportation.

ACTION: Institution of Miami-Cancun Service Proceeding.

SUMMARY: The Department has decided to institute the *Miami-Cancun Service Proceeding*, Docket 47223, to select a primary and backup carrier to engage in scheduled foreign air transportation of persons, property, and mail between Miami, Florida, and Cancun, Mexico. Eastern Air Lines, Inc., currently holds certificate authority and is designated to serve the route. In April 1990, the Governments of the United States and Mexico agreed to permit the designation of an additional carrier from each country on the route. The case will be decided using written, non-oral evidentiary hearing procedures under rule 1750 of the Department's regulations (14 CFR 302.1750). The Department is not inviting further applications for the authority at issue and has established an expedited schedule for processing this case so that the selected carrier may begin its Cancun service in time for the 1990 peak winter season. By this order, the Department also dismisses the exemption applications filed by Pan American World Airways, Inc., and

American Airlines, Inc., for Miami-Cancun authority (Dockets 46498 and 46479, respectively), and grants the application of American Airlines for exemption authority to serve the Miami-Cozumel market (Docket 46479).

DATES: Petitions for consideration of Order 90–10–31, should be filed by October 29, 1990; and answers by November 1, 1990.

ADDRESSES: Petitions for reconsideration should be filed in Docket 47223 and served on all parties in Docket 47223.

Dated: October 22, 1990.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 90–25341 Filed 10–25–90; 8:45 am]

BILLING CODE 4910–62–M

Office of the Secretary

[Order 90–10–34; Docket 44445]

Final Intra-Alaska Bush Service Mail Rates

AGENCY: Department of Transportation.

ACTION: Notice of order terminating investigation.

SUMMARY: The Department of Transportation is advising all interested persons that we are terminating the investigation of the intra-Alaska bush service mail rate structure instituted by Order 86–10–45, October 29, 1986.[1] The order established new final mail rates effective from April 13, 1988, through March 31, 1989, and from April 1, 1989, through March 31, 1990.

FOR FURTHER INFORMATION CONTACT: James E. Gardner, Office of Aviation Analysis, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. (202) 366–2438.

Dated: October 22, 1990.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 90–25340 Filed 10–25–90; 8:45 am]

BILLING CODE 4910–62–M

[Docket No. 47224]

Order Instituting Miami/Tampa-Toronto Service Investigation

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Institution of the Miami/Tampa-Toronto Service Investigation Order 90–10–32.

SUMMARY: By Order 90–5–5, the Department approved the transfer of several Eastern Air Lines' and Continental Airlines' routes to American Airlines. However, the Department withheld approval for transfer of the Miami/Tampa-Toronto route based on its finding that Eastern's existing service was inadequate and decided to reexamine the service needs of this market in a new proceeding and to invite competing applications from other U.S. carriers.

Consistent with its decision in Order 90–5–5, the Department has decided to institute the *Miami/Tampa-Toronto Service Investigation* to determine which carrier should be selected to serve the Miami/Tampa-Toronto markets. Under the U.S.-Canada aviation agreement, only one U.S. carrier may be designated to provide service on the route. Eastern holds the designation, but serves only the Miami-Toronto market. The order invites applications from U.S. carriers interested in serving the subject markets and also places at issue amendment or modification of the Eastern/Continental authority to serve this route. The Department states that it will decide the issue of appropriate carrier selection procedures after receipt of the applications. The Department also dismisses the exemption applications filed by American Airlines, Pan American World Airways and USAir for either Miami-Toronto or Tampa-Toronto authority and reinstates the certificate application filed by Pam American World Airways which was inadvertently dismissed by Order 90–5–5.

DATES: Applications for Miami/Tampa-Toronto authority, motions to consolidate, petitions for leave to intervene, and petitions for reconsideration of Order 90–10–32 should be filed by November 16, 1990. Answers should be filed by November 26, 1990.

ADDRESSES: Applications, motions to consolidate, petitions for leave to intervene, petitions for reconsideration, etc., should be filed in Docket 47224, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590 and should be served on all parties in Docket 47224, as well as Mr. Robert Goldner, room 9216, at the above address.

Dated: October 22, 1990.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 90–25337 Filed 10–25–90; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

[FAA Billing No: BOAC 696001]

Intent To Prepare Environmental Impact Statement for Proposed Development at Lambert-St. Louis International Airport; St. Louis, MO

AGENCY: Federal Aviation Administration, Central Region, Kansas City, Missouri.

ACTION: Notice of intent.

SUMMARY: The Federal Aviation Administration is issuing a Notice of Intent that an Environmental Impact Statement will be prepared for the proposed development at Lambert-St. Louis International Airport, St. Louis, Missouri.

FOR FURTHER INFORMATION CONTACT: Dr. John L. Tatschl, Federal Aviation Administration, Airports Division, 601 E. 12th Street, Kansas City, Missouri 64106, telephone (816) 426–6614.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), the Federal Aviation Administration (FAA will prepare an Environmental Impact Statement for the proposed development planned for the next 10 to 20 years at Lambert-St. Louis International Airport, St. Louis, Missouri. The proposed development includes, but is not limited to, the following: construction of four parallel runways, terminal expansion, relocation of the Air Traffic Control Tower, reconstruction and expansion of existing terminal area parking garage, relocation of segments of Lindberg Boulevard and Interstate Highway 70, terminal access roadway relocation and expansion, and relocation of the Air National Guard, TWA Hangar, General Aviation, and Air Cargo Facilities. The Environmental Impact Statement will address environmental considerations of the proposed actions and of numerous alternatives to the proposed action. The document will address direct and indirect environmental impacts, both beneficial and detrimental to the natural and human environment.

The Federal Aviation Administration will utilize the scoping process as

[1] Published at 51 FR (39605), October 29, 1986.

outlined in the CEQ guidelines. This process will determine potentially significant issues related to the proposed airport development. To initiate the formal scoping process, interested individuals, governmental agencies, and private organizations will be invited in the near future to submit information and comments on this proposed action for consideration by the Federal Aviation Administration for incorporation into the Environmental Impact Statement. Concerned individuals and agencies will be asked to express their views either by writing or by participating in a future scoping meeting. Adequate notice will be published in local area newspapers and other local media at a later date to inform interested parties of the exact place and time of any scoping meetings. The purpose of public scoping meetings are: (1) To provide a description of the proposed action, (2) to identify potential impacts and issues that should be included in the Environmental Impact Statement, and (3) to identify other coordination and permit requirements associated with the proposed action. Questions and comments regarding the scope of the environmental analysis should be directed to: Dr. John Tatschl, Federal Aviation Administration, Central Region Office, 601 E. 12th Street, Federal Office Building, Kansas City, Missouri, 64106, (816) 426–6614.

George A. Hendon,

Manager, Airports Division.

[FR Doc. 90–25299 Filed 10–25–90; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Cumberland, Sampson and Duplin Counties, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Cumberland, Sampson and Duplin Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: Robert L. Lee, District Engineer, Federal Highway Administration, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone: (919) 790–2856.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration, in cooperation with the North Carolina Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to provide improved traffic flow between I–95 near Fayetteville and I–40 near Warsaw. The proposed project would consist of construction of NC 24 as a four-lane controlled access highway on new location from a point 2.8 miles east of I–95 to I–40. The proposed highway is considered necessary to handle existing and projected traffic demand and to provide a link between two major interstate routes. This portion of NC 24 also provides a link between several large military bases and many cities, towns and communities. Alternatives under consideration include: (1) Taking no action (No Build); (2) improvement of existing routes (Upgrade); and (3) two Build alternatives.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations who have previously expressed interest in this project. A series of public meetings and a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be made available for public and agency review and comment.

To ensure that the full range of issues related to the proposed action are addressed and all significant isuses identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Robert L. Lee,

District Engineer, Raleigh, North Carolina.

[FR Doc. 90–25304 Filed 10–25–90; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

Dated: October 19, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0205.

Form Number: ATF REC 5110/01, ATF F 5110.40.

Type of Review: Extension.

Title: Distilled Spirits Records and Monthly Report of Production Operations.

Description: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends in the industry, and plan efficient allocation of field resources, audit plant operations and compilation of statistics for government economic analysis.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 140.

Estimated Burden Hours Per Response: 2 hours.

Frequency of Response: Monthly.

Estimated Total Reporting Burden: 3,360 hours.

Clearance Officer: Robert Masarsky (202), 566–7077, Bureau of Alcohol, Tobacco and Firearms, room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB River: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 90–25367 Filed 10–25–90; 8:45 am]

BILLING CODE 4810–31–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: October 22, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department

Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0341.
Form Number: ATF REC 5150/8.
Type of Review: Extension.
Title: Stills-Notices, Registration and Records.
Description: The information collected is used to account for and regulate the distillation of spirits. As there could be a substantial tax revenue loss that would be incurred through the illegal distillation of spirits, the data collected identifies the manufacturers, vendors and users of spirits as well as providing an accounting of stills and other apparatus.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 10.
Estimated Burden Hours Per Response: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 21 hours.

OMB Number: 1512–0461.
Form Number: ATF 5110/11.
Type of Review: Extension.
Title: Marks and Labels on Containers of Distilled Spirits.
Description: The marking, branding and labeling of containers of spirits by distilled spirits plants provide the data to identify, trace, and quantify the spirits.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 254.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: Other (No recordkeeping or reporting).
Estimated Total Reporting Burden: 1 hour.

OMB Number: 1512–0482.
Form Number: ATF 5100/1.
Type of Review: Extension.
Title: Labeling and Advertising Requirements Under the Federal Alcohol Administration Act.
Description: Under the Federal Alcohol Administration Act, bottlers and importers of alcohol beverages are required to display certain information for consumers on labels and in advertisements. Other optional statements are also required.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 6,060.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1 hour.
Clearance Officer: Robert Masarsky (202), 566–7077, Bureau of Alcohol, Tobacco and Firearms, room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 90–25368 Filed 10–25–90; 8:45 am]
BILLING CODE 4810–31–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: October 22, 1990.

The Department of the Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: 8824.
Type of Review: Resubmission.
Title: Like-Kind Exchanges.
Description: Form 8824 is used by individuals, corporations, partnerships, and other entities to report the exchange of business or investment property, and the deferral of gains from such transactions under section 1031. It is also used to report the deferral of gain under section 1043 by members of the executive branch of the Federal government.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents: 200,000.
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping, 27 minutes
Learning about the law or the form, 22 minutes
Preparing the form, 54 minutes
Copying, assembling, and sending the form to IRS, 17 minutes
Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 321,892 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 90–25369 Filed 10–25–90; 8:45 am]
BILLING CODE 4830–01–M

[Delegation Order No. 218 (Rev. 2)]

Internal Revenue Service

Delegation of Authority; Austin Compliance Center

AGENCY: Internal Revenue Service.
ACTION: Delegation of authority.

SUMMARY: Delegation Order No. 218 has been revoked since specific delegations have been provided for the Austin Compliance Center in various delegation orders.

EFFECTIVE DATE: May 21, 1990.

FOR FURTHER INFORMATION CONTACT: Melva Scruggs, P:P:O:D, Room 3139, 1111 Constitution Ave., NW., Washington, DC 20224, Telephone: (202) 566–4273 (not a toll-free telephone number).

Order No. 218 (Rev. 2) [Revoked]

Effective Date: May 21, 1990.

Dated: May 21, 1990.

Approved:

Charles H. Brennan,
Deputy Commissioner (Operations).

Note: This document was received by the Office of the Federal Register on October 22, 1990.

[FR Doc. 90–25290 Filed 10–25–90; 8:45 am]
BILLING CODE 4830–01–M

Office of Thrift Supervision

Heritage Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for

Heritage Federal Savings Bank, Richmond, Virginia on October 19, 1990.

Dated: October 22, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-25372 Filed 10-25-90; 8:45 am]

BILLING CODE 6720-01-M

Fortune Financial Federal Savings and Loan Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Fortune Financial Federal Savings and Loan Association, Copperas Cove, Texas, with the Resolution Trust Corporation as sole Receiver for the Association on October 19, 1990.

Dated: October 22, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-25370 Filed 10-25-90; 8:45 am]

BILLING CODE 6720-01-M

Office of Thrift Supervision Gold Coast Savings Bank; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Gold Coast Savings Bank, Plantation, Florida on October 19, 1990.

Dated: October 22, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-25371 Filed 10-25-90; 8:45 am]

BILLING CODE 6720-01-M

Heritage Savings Bank, F.S.B.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Heritage Savings Bank, F.S.B., Richmond, Virginia, OTS No. 7103, on October 19, 1990.

Dated: October 22, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-25373 Filed 10-25-90; 8:45 am]

BILLING CODE 6720-01-M

Uvalde Federal Savings and Loan Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Uvalde Federal Savings and Loan Association, Uvalde, Texas, Docket No. 8733, with the Resolution Trust Corporation as sole Receiver for the Association on October 19, 1990.

Dated: October 22, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-25374 Filed 10-25-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-60; OTS No. 05312]

Founders Federal Savings and Loan Association, Williamsport, Pennsylvania; Final Action; Approval of Conversion Application

Notice is hereby given that on October 16, 1990, the Office of the Chief Counsel, Office of the Thrift Supervision, acting pursuant to delegated authority, approved the application of Founders Federal Savings and Loan Association, Williamsport, Pennsylvania, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and District Director, Office of Thrift Supervision of Pittsburgh, One Riverfront Center, Twenty Stanwick Street Pittsburgh, Pennsylvania 15222.

Dated: October 19, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-25375 Filed 10-25-90; 8:45 am]

BILLING CODE 6720-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-80]

Section 302 Investigation: Canada's Restrictive Practices Affecting the Importation of Beer

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for comment on issues included in investigation under section 302 of the Trade Act of 1974, as amended ("the Trade Act").

SUMMARY: On September 14, 1990, the Stroh Brewery Company ("Stroh") filed a petition pursuant to section 302 of the Trade Act regarding Canada's restrictive practices affecting imports of beer. The allegations raised by Stroh in its petition are already being considered by the United States Trade Representative (USTR) in an investigation initiated by USTR under section 302 of the Trade Act on June 29, 1990 (Docket No. 301-80), in response to a petition filed by G. Heileman Brewing Company, Inc. ("Heileman"). Therefore, rather than initiate a separate investigation, the USTR will investigate the matters raised in the Stroh petition in the course of its investigation in Docket No. 301-80, and USTR requests public comment on the matters raised in the Stroh petition.

DATES: Written comments from interested persons are due by 12 noon on November 26, 1990.

ADDRESSES: Comments must be addressed to: Chairman, Section 301 Committee, Office of the United States Trade Representative, room 223, 600 17th St., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Ellen Terpstra, Advisor to the Assistant U.S. Trade Representative for Agriculture, (202) 395-5006, or Andrew Shoyer, Assistant General Counsel, (202) 395-7203.

SUPPLEMENTARY INFORMATION: On September 14, 1990, the Stroh Brewery Company ("Stroh") filed a petition pursuant to section 302 of the Trade Act regarding Canadian practices affecting imports of beer. In particular, Stroh asserts that discriminatory mark-ups and restrictions on distribution of beer within the Canadian province of Ontario violate the General Agreement on

Tariffs and Trade (GATT) and the U.S.-Canada Free-Trade Agreement. Stroh alleges that the Canadian practices are therefore unjustifiable, unreasonable and discriminatory, and constitute a burden or restriction on U.S. commerce. Stroh requests that the USTR take appropriate action under section 301 of the Trade Act.

On June 29, 1990, pursuant to section 302(a) of the Trade Act, the USTR initiated an investigation with respect to Canadian practices referred to in a petition filed on May 15, 1990 by Heileman. In its petition, Heileman referred to the same pricing and distribution practices within the province of Ontario as alleged by Stroh in its petition. Accordingly, the practices referred to by Stroh in its petition are already the subject of an investigation under section 302 of the Trade Act and will be fully considered and addressed in the context of that investigation.

For these reasons, the USTR has determined not to initiate a separate investigation under section 302 of the Trade Act with respect to the petition filed by Stroh on September 14, 1990, and Stroh concurs in this decision. The Stroh petition has been included in the docket (Docket No. 301–80) that has been established for the investigation initiated on June 29, 1990 with respect to the petition filed by Heileman, and all factual information contained in the Stroh petition has been made part of the official record. Copies of the public version of the Stroh petition are available for public inspection at the USTR Reading room, room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC. An appointment to review the docket may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday to Friday.

PUBLIC COMMENT: Interested persons are invited to submit written comments on the issues raised in the Stroh petition. Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) and are due by noon on November 26, 1990. Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, room 223, USTR, 600 17th Street, NW., Washington, DC 20506.

Comments will be placed in Docket 301–80, open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. (Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary shall be placed in the Docket which is open to public inspection.)

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 90–25406 Filed 10–25–90; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF VETERANS AFFAIRS

Prosthetics Services Advisory Committee; Establishment

In accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409) and Office of Management and Budget Circular A–63, as revised, and after consultation with the General Services Administration, the Secretary, VA (Department of Veterans Affairs), has determined that establishment of the Prosthetics Services Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed on VA by law.

This Committee has been established to review and address the prosthetics programs within VA to include how the Department can best improve program accountability, quality, and timeliness of services; allocate resources; promote equity of access; expand the use of national contracts for prosthetic items and services; consolidate purchasing power; standardize requirements; and define the national mission of the Prosthetics Research and Development Center (PRDC) currently located in Baltimore, Maryland.

The Committee shall submit a report to the Secretary on its findings and recommendations on the above mentioned issues. Thereafter, the Committee shall submit annually a report to the Secretary on the status of prosthetic services and associated rehabilitation research and development programs within VA, with special emphasis on program effectiveness, information dissemination, sufficiency of resources; adequacy of the testing and evaluation of new rehabilitation technology available commercially or from VA research; and suggested priority areas for future VA funded research.

Members of the Committee will be selected from among individuals with expertise in fields such as Audiology and Speech Pathology, Blind Rehabilitation, Orthopedics, Orthotics, Prosthetics, Recreation Therapy, Rehabilitation Medicine, and Spinal Cord Injury. Membership will include disabled veteran users of VA prosthetic services and representation from veteran service organizations with a prominent interest in the field of prosthetics.

Comments of interested persons concerning the establishment of the Prosthetics Services Committee may be submitted to Margaret J. Giannini, M.D., Deputy Assistant Chief Medical Director for Rehabilitation & Prosthetics (141D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington DC 20420, (202) 233–5177.

Dated: October 12, 1990.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 90–25285 Filed 10–25–90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel—Precedent Opinion 74–90; Discontinuance of Apportionment Due to Divorce

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—(1) Does title 38, United States Code, support the general rule set forth in 38 CFR 3.500(d), that an apportionment of benefits is to be discontinued the date of last payment when the reason for the apportionment no longer exists? (2) If the general rule provided by 38 CFR 3.500(d) is sustainable, does it govern discontinuance of an apportionment as to the apportionee in the event of divorce? (3) If an apportionment may be discontinued retroactively, is the apportionee or the veteran the "indebted beneficiary" within the meaning of 38 U.S.C. 3101(b)?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This opinion, previously issued as General Counsel Opinion 10–87, dated May 19, 1987, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifies deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 74–90, Discontinuance of Apportionment Due to Divorce, requested by Chairman, Board of Veterans Appeals, is as follows:

Held

(1) Section 3.500(d)(1) of title 38, CFR, is supported by statutory authority, i.e., 38 U.S.C. 210(c)(1), 3012, and 3107(a).

(2) "Date of last payment" found in §3.500(d) refers to DLP as of the time the reason for the apportionment ceases to exist.

(3) Section 3.500(d) does not apply to discontinuance of apportionment due to divorce; rather, § 3.501(d) applies in such cases.

(4) Section 3101(b) of title 38, U.S.C., does not shift the label "debtor" from the apportionee to the primary beneficiary, or vice versa. The primary beneficiary is responsible to refund the overpayments that the primary beneficiary has received, and the apportionee is responsible to refund benefit overpayments that the apportionee has received.

(5) Section 3101(b) supplements the common law so as to permit collection by offset against benefits due the primary beneficiary of a debt occasioned by overpayment to the apportionee on the same account.

(6) The Agency is at liberty to first assert a claim against the apportionee and resort to offset against the benefits due the primary beneficiary on the same account only if efforts to collect from the apportionee prove unsuccessful.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–25359 Filed 10–25–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 67–90; Congenital/Developmental Conditions under 38 CFR 3.303(c)

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—whether an hereditary disease under 38 CFR 3.303(c) always rebuts the presumption of soundness found in 38 U.S.C. 311 and 332.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This opinion, previously issued as General Counsel Opinion 8–88, dated September 29, 1988, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.).

Va publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 67–90, Congenital/Developmental Conditions under 38 CFR 3.303(c), requested by Chairman, Board of Veterans Appeals, is as follows:

Held: An hereditary disease under 38 CFR 3.303(c) does not always rebut the presumption of soundness found in 38 U.S.C. 311 and 332. Service connection may be granted for hereditary diseases which either first manifest themselves during service or which preexist service and progress at an abnormally high rate during service.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–25352 Filed 10–25–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 70–90; Countability for Improved Pension Purposes of Interest Accrued on Retirement Annuity Accounts

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives,

with notice of VA's interpretation regarding the legal matter at issue—Whether interest accrued on an Individual Retirement Annuity owned by a deceased veteran's surviving spouse, who is in receipt of death pension under the improved pension program, is countable as income for pension purposes, and, if so, when and to what extent.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 3–88, dated June 14, 1988, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 70–90, Countability for Improved Pension Purposes of Interest Accrued on Retirement Annuity Accounts, requested by Chairman, Board of Veterans Appeals, is as follows:

Held: As it appears that the interest credited to the claimant's annuity accounts cannot currently be obtained without substantial penalty, such interest should not be counted at this time as income for purposes of determining the claimant's entitlement to improved pension. This does not prevent the counting of such interest as income at some future date when it may be considered as having actually been received by the claimant. Further, annuity contracts may be considered under the net-worth factors listed in 38 CFR 3.275(d) in determining whether it is reasonable that some portion of the claimant's estate should be consumed for the claimant's maintenance.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–25355 Filed 10–25–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 69–90; Application of Change in Law during Pendency of Appeal

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Did the Board of Veterans Appeals exceed its authority by rendering a decision based upon criteria superceded by 38 CFR 3.311b, which was adopted during the pendency of the appeal, and, if so, should the Board be required to reconsider such a decision, presumably with application of the new regulations?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 4–88, dated June 14, 1988, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 69–90, Application of Change in Law during Pendency of Appeal, requested by Chief, Benefits Director, is as follows:

Held: The criteria set forth in 38 CFR 3.311b are proper for application to any decision entered by the Board of Veterans Appeals after adoption of the new regulation, notwithstanding that the appeal may have been pending before the regulation became effective. The Board may be requested to reconsider any decision based on criteria superceded by 38 CFR 3.311b, but any decision to do so is at the discretion of the Board.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–25354 Filed 10–25–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Consel-Precedent Opinion 75–90; Entitlement to Service-Connected Benefits Where Disability or Death Is Compensable Under 38 U.S.C. 360 "As If" Service-Connected

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public,

and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Whether entitlement to compensation under 38 U.S.C. 360 will serve to provide entitlement to the following ancillary benefits: a. Dependency and indemnity compensation under 38 U.S.C. 410(b); b. Specially adapted housing and special home adaptation grant under 38 U.S.C. 801; c. Dependents educational assistance under 38 U.S.C. 801, chapt. 35; and d. Special allowance under 38 U.S.C. 412.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 9–87, dated October 21, 1987, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 75–90, Entitlement to Service-Connected Benefits Where Disability or Death Is Compensable Under 38 U.S.C. 360 "As If" Service-Connected, requested by Chief Benefits Director, is as follows:

Held: In summary, 38 U.S.C. 360 entitlement will provide eligibility to section 410(b) DIC, if the other requirements are met. Section 360 entitlement will not supply eligibility to specially adapted housing under section 801, dependents educational assistance under chapter 35, or the special Social Security allowance under section 412(a).

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–25360 Filed 10–25–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel—Precedent Opinion 68–90; Applicability of 38 U.S.C. 410(b) Where Total Disability May Have Preceded Effective Date of Total Disability Rating

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—(1) Whether the previously adjudicated effective date of a total service-connected disability rating assigned by the originating agency is final, for purposes of entitlement to benefits under section 410(b), absent clear and unmistakable error, or whether 38 CFR 19.196 mandates a *de novo* review by the Board of Veterans Appeals; and (2) Whether, if it were determined from a medical standpoint that an unemployed veteran was totally disabled for a continuous period of 10 or more years immediately preceding his death, a date of claim less than 10 years before date of death and more than 1 year after the date it is factually ascertainable that total disability has occurred, would permit an award of section 410(b) benefits.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 7–88, dated September 22, 1988, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 68–90, Applicability of 38 U.S.C. 410(b) Where Total Disability May Have Preceded Effective Date of Total Disability Rating, requested by Chairman, Board of Veterans Appeals, is as follows:

Held: In summary, it is held that:

(1) The effective date of a total service-connected disability rating assigned by the originating agency is final (subject to timely appeal), for purposes of entitlement of a veteran's survivors to benefits under 38 U.S.C. 410(b), in the absence of clear and unmistakable error; and

(2) Where a claim for total service-connected disability rating was filed more than one year after the onset of total disability and granted effective on the date of claim, the death of the veteran less than ten years after such effective date precludes entitlement to section 410(b) benefits, absent clear and unmistakable error in the assignment of that effective date.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90–25353 Filed 10–25–90; 8:45 am]

BILLING CODE 8320–01–M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 71-90; Treatment of Tribal Per Capita Payments for Improved Pension Purposes

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Whether tribal per capita payments or dividends, received by a veteran, should be considered income for improved pension purposes.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 2-88, dated March 1, 1988, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 71-90, Treatment of Tribal Per Capita Payments for Improved Pension Purposes, requested by Chief Benefits Director, is as follows:

Held: Congress' purpose in enacting Public Law No. 98-64 and 97-458 was clearly that per capita distributions within the terms of those statutes are not to be counted in determining income or resources in any Federal or federally assisted program, except where such payments exceed $2,000. Accordingly, if the veteran has received per capita distributions of funds held in trust by the Secretary of the Interior for an Indian tribe and not otherwise excludable from income under section 503(a) of title 38, such distributions, not exceeding $2,000 are excludable from income for improved pension purposes pursuant to Public Law No. 98-64.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-25356 Filed 10-25-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 72-90; Trust Property, Countable Income and Net Worth

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—(1) Are the trust assets at issue in this case which are being held for the benefit of the veteran countable as income in determining the veteran's entitlement to improved pension? (2) If so, at what point? (3) Are these trust asssets countable in the veteran's estate for purposes of the $2,500 limitation provisions of 38 U.S.C. 3203(b)(1)(A)? (4) Is the trustee of the estate a fiduciary within the meaning of 38 CFR 3.557(c)(1)(iv)?

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulations or superseding written legal opinion of the General Counsel. (This opinion, previously issued as General Counsel Opinion 1-88, dated February 10, 1988, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 72-90, Trust Property, Countable Income and Net Worth, requested by Chairman, Board of Veterans Appeals, is as follows:

Held

(1) For purposes of the income and net worth limitations applied under 38 U.S.C. 503, 521, 522 to determinations of eligibility for improved pension, and for purposes of the $1,500 estate limitation provisions imposed by 38 U.S.C. 3203(b)(1)(A), the property held in a discretionary trust, and income therefrom, is not countable until it is actually allocated for the claimant's use, unless the claimant possesses such control over the property that the claimant may direct it to be used for the claimant's benefit.* [* For the same reasons, the principles enunciated above apply to determinations of eligibility of

surviving spouses and children to improved death pension.]

(2) The term "fiduciary" in 38 CFR 3.557(c)(1)(iv) refers to a person or entity recognized as such for the payment of VA-benefit funds.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-25357 Filed 10-25-90; 8:45 am]

BILLING CODE 8320-01-M

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 73-90; Scope of 38 U.S.C. 360 in Relation to 38 U.S.C. 351

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of a legal interpretation issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters. It is being published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue—Whether the provisions of 38 U.S.C. 360 are applicable where a veteran's loss of use of an extremity is compensable under 38 U.S.C. 351 and loss of use of the other paired extemity is neither service-connected nor quasi-service-connected under section 351.

EFFECTIVE DATE: July 18, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Jay D. Farris, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2159.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel. (This, opinion, previously issued as General Counsel Opinion 11-87, dated October 2, 1987, is reissued as a Precedent Opinion pursuant to 38 CFR 2.6(e)(9) and 14.057. The text of the opinion remains unchanged from the original except for certain format and clerical changes necessitated by the aforementioned regulatory provisions.)

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel which must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

A summary of the General Counsel's opinion designated O.G.C. Prec. 73-90, Scope of 38 U.S.C. in Relation to 38 U.S.C. 351, requested by Chief Benefits Director, is as follows:

Held

Section 351 eligibility confers entitlement to disability compensation provided under section 360, if eligibility otherwise exists.

Dated: August 27, 1990.

Raoul L. Carroll,

General Counsel.

[FR Doc. 90-25358 Filed 10-25-90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 208
Friday, October 26, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., October 31, 1990.

PLACE: Hearing Room One, 1100 L Street, N.W., Washington, D.C. 20573-0001.

STATUS:

A portion of the meeting will be open to the public.

A portion of the meeting will be closed to the public.

MATTER(S) TO BE CONSIDERED:

Portion Open to the Public

Docket No. 90-06 *Notice of Inquiry—Marine Terminal Operator Regulations*—Consideration of Comments.

Portion Closed to the Public

1. Maritime Restrictions in Foreign Trades—Korea.
2. Trans-Atlantic Enforcement Initiative.
3. Trans-Pacific Malpractice Program.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 90-25565 Filed 10-24-90; 3:35 pm]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, October 31, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed 1991 Private Sector Adjustment Factor for Federal Reserve priced services.
2. Proposed national Automated Clearing House (ACH) net settlement service.

Discussion Agenda

3. Publication for comment of a proposed amendment to Regulation Y (Bank Holding Companies and Change in Bank Control) regarding appraisal standards for Federally related transactions.
4. Proposals regarding the Federal Reserve System's seasonal credit program.
5. Proposed 1991 Fee Schedules for Federal Reserve priced services.
6. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: October 24, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-25503 Filed 10-24-90; 12:04 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:30 a.m., Wednesday, October 31, 1990, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approxiamtely 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 24, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-25504 Filed 10-24-90; 12:04 pm]

BILLING CODE 6210-01-M

POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, November 5, 1990, and at 8:30 a.m. on Tuesday, November 6, 1990, in Washington, DC. The November 5 meeting, at which the Board will discuss possible strategies in collective bargaining negotiations, is closed to the public (See 55 F.R. 40994, October 5, 1990). The November 6 meeting is open to the public and will be held on the Benjamin Franklin Room at Postal Service Headquarters, 475 L'Enfant Plaza, SW. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

AGENDA

Monday Session

November 5-1:00 p.m. (Closed)

1. Status Report on Collective Bargaining Negotiations. (David H. Charters, Senior Assistant Postmaster General, Human Resources Group, and Joseph J. Mahon, Jr., Assistant Postmaster General, Labor Relations Department)

Tuesday Session

November 6-8:30 a.m. (Open)

1. Minutes of the Previous Meeting, October 1-2, 1990.
2. Remarks of the Postmaster General. (Anthony M. Frank)
3. Report on Technology Resource Department. (Karen T. Uemoto, Assistant Postmaster General,Technology Resource Department)
4. Capital Investments:
   a. Boston, Massachusetts, Northwest Center Mail Processing Facility. (Stanley W. Smith, Assistant Postmaster General, Facilities Department; and Thomas K. Ranft, Boston Field Division General Manager/Postmaster)
   b. Washington, D.C., National Postal History and Philatelic Museum. (Mr. Smith and Gordon C. Morison, Assistant

Postmaster General, Philatelic and Retail Services Department)

5. Quarterly Report on Service Performance. (Ann McK. Robinson, Consumer Advocate)

6. Tentative Agenda for December 3–4, 1990, meeting in New Orleans, Louisiana.

David F. Harris,

Secretary.

[FR Doc. 90–25486 Filed 10–24–90; 10:27 am]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 55, No. 208
Friday, October 26, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

Correction

In notice document 90-24257 appearing on page 41740 in the issue of Monday, October 15, 1990, make the following correction:

On page 41740, in the second column, in the file line at the end of the document, the FR document number should read "90-24257".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP90-122-004, RP88-191-024, and RP85-178-071]

Tennessee Gas Pipeline Co.; Tariff Filing

Correction

In notice document 90-24538 beginning on page 42256 in the issue of Thursday, October 18, 1990, make the following correction:

On page 42256, in the third column, the docket numbers should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 90N-0165]

RIN 0905-AD08

Food Labeling; Serving Sizes; Correction

Correction

In proposed rule document 90-23742 beginning on page 41106 in the issue of Tuesday, October 9, 1990, make the following corrections:

On page 41106, in the third column, in the paragragh numbered 1, the last three lines should have appeared in larger print; and in the third line from the bottom of that paragraph, the symbol "$>$" should read "$\geq$".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90P-0271]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

Correction

In notice document 90-24411 appearing on page 42071 in the issue of Wednesday, October 17, 1990, make the following correction:

On page 42071, in the third column, in the first full paragraph, in the third line "1946" should read "946".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

Correction

In notice document 90-24560 beginning on page 42071 in the issue of Wednesday, October 17, 1990, make the following corrections:

1. On page 42073, in the first column, in the fifth paragraph, in the second line "Council" should read "Counsel".

2. On the same page, in the second column, in the first full paragraph, in the fourth line "FDCA" should read "FACA".

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

Correction

In notice document 90-24100 appearing on page 41608 in the issue of Friday, October 12, 1990, make the following correction:

On page 41608, in the first column, in the third paragraph, in the second line insert "operations, and State of operations:" after "the" and before "P.C".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 7, 18, 57, and 75

RIN 1219-AA57

Electric Cables, Signaling Cables and Cable Splice Kits

Correction

In proposed rule document 90-23108 beginning on page 40124 in the issue of Monday, October 1, 1990, make the following corrections:

1. On page 40124, in the second column, in the third full paragraph, in the second line, "and" should read "any".

2. On page 40126, in the 3rd column, in the first full paragraph, in the 13th line, "Assembly" should read "assembly".

3. On page 40127, in the second column, in the first full paragraph, in the eighth line, "instruction" should read "instrument".

4. On page 40130, in the third column, in the table, under the heading "New section", in the fifth entry, "*" should be deleted.

§ 7.406 [Corrected]

5. On page 40132, in the second column, in § 7.406, in paragraph (a), in the second line, "measuring" was misspelled.

§ 7.407 [Corrected]

6. On the same page, in the third column, in § 7.407, in paragraph, (a)(2), in the third line, "7010" should read "70±10".

BILLING CODE 1505-01-D

DEPARTMENT OF VETERANS AFFAIRS

Summary of Legal Interpretation of the General Counsel-Precedent Opinion 8-90, VA Disposition of Residential Real Property Owned by Other Federal Agencies or Related Entities

Correction

In notice document 90-15129 beginning on page 26809 in the issue of Friday, June 29, 1990, in the second column, in the subject heading, the opinion number should have read as set forth above.

BILLING CODE 1505-01-D

federal register

Friday
October 26, 1990

Part II

Department of Transportation

Federal Highway Administration

Final Orders in Motor Carrier Safety Enforcement Cases; Notice

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Final Orders in Motor Carrier Safety Enforcement Cases

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of final orders.

SUMMARY: This document gives notice of the Final Orders served from March 26, 1990, through the present time concerning motor carrier and hazardous materials proceedings conducted pursuant to 49 CFR part 386. The Orders include both those issued by the Associate Administrator and those issued by Administrative Law Judges and adopted by the Associate Administrator.

FOR FURTHER INFORMATION CONTACT: Mr. David C. Oliver, Motor Carrier and Highway Safety Law Division (202) 366–1356; or Mr. Michael J. Laska, Legislation and Regulations Division (202) 366–1383, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 pm., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The following Final Orders are being published:

Name	Docket No.
Texas Highway Transport, Inc.	R6–90–37
Autotrans, Inc.	R1–90–10
Propane Transportation Corp.	R1–90–09
RAJ Chemicals, Inc., of Virginia	R3–90–055
Browning Services, Inc.	R3–90–08
Woodbury Horse Transportation, Inc. (Administrative Law Judge Order).	R1–88–1
Yankee Trails, Inc. (Administrative Law Judge Order).	R1–89–07
Ronald William Dreyer	R5–89–137
Alamo Distributing Service, Inc.	R6–89–63
R. Brown & Sons, Inc.	R1–90–06
David Salinas	R6–90–20
Wisconsin Protein Carriers, Inc.	R5–90–07
Edgar J. Anderson	R6–90–225
Kenworth of Tennessee, Inc.	89–TN–031–5A
Tonawanda Tank Transport Service, Inc.	R1–88–130
Corey Brothers, Inc.	R3–90–05
Drotzmann, Inc. (Administrative Law Judge Order).	R10–89–11
Schaffner Mfg. & Sales Corp.	R1–90–083
D & N Bus Service, Inc.	R3–90–107
Johnny D. Secrest 89–03D	
A. Weinfeld & Sons, Inc.	R3–90–032
D & D Transportation Co., Inc.	R1–89–276
Abbey Metal Corp.	R1–90–014
Rig Runner Express, Inc.	R6–89–11
Alamo Distributing Service, Inc.	R6–89–63
Uncle Bo's Equipment Co.	R6–89–15
James David Caver dba, J.D. Caver & Co.	R6–89–32
Aaron McGruder Trucking, Inc.	R6–89–56
Chaparral Van Lines	R6–89–55
Plating Products Co., Inc.	R1–90–008
Drotzmann, Inc.	R10–89–11
Service Bus Co., Inc.	R1–89–052
Bower Tiling Service, Inc.	R5–90–03
Charles M. Cephas, Inc.	R3–88–099
Warehouse Imports, trading as Continental Imports, Inc.	R3–89–031
Arthur Shelley Inc.	R3–89–034
Chemical Commodities, Inc.	R7–90–02
A. Weinfeld & Sons, Inc.	R3–90–032
Arizona Freight Systems, Inc.	R9–89–052
J. L. McCoy, Inc.	R3–88–029
Wilmington Tank Lines, Inc.	R3–89–196
Carter's Bus Service, Inc.	R3–89–156
Trinity Transportation, Inc.	R9–90–001
Horizon Transportation, Inc.	R3–89–114
John T. Lesnak	R3–88–023
A. T. Pinto, Inc.	R3–90–006
American Bulk Transport Co., Inc.	R7–89–08
Channel Solvents and Chemicals, Inc.	R6–88–41
Williams Bus Excursions	R3–88–015
Medi-Call Ambulance Services, Inc.	R3–89–202
Vend-Rite Service Corp.	R3–90–050
M & T Trucking Services, Inc., V.I. Gas, Inc., Challenger's Trucking, Inc.	Consolidated Docket No. 89–41
White's Bus Rental, Inc.	R3–90–039
Stenger Gas Corp.	R3–89–185
Stanford & Inge, Inc.	R3–89–211
Industrial Nuclear Co. United States Testing Co., Inc.	R9–90–002
Strong Trucking (Ashbell & Mary Strong, d/b/a).	R3–88–061
Krug Trucking Co. (Michael Krug, d/b/a).	R3–89–125
Action Metal Co., Inc.	R1–89–244
J. R. Christoni	R1–89–2223
Calgon Corportation	R3–89–171
Wonder Chemical Company	R3–88–073
Leroy Randolph	R3–88–090
John Steven Johnson	R3–89–058
Williams Bus Excursions	R3–88–015
Hunter Oil Co., Inc.	R3–88–089
E. L. Lawson Trucking, Inc.	R1–89–015
A. T. Pinto	R3–90–006
Rent-A-Stretch	89–196
C & W Enterprises	R3–88–064
Onnie O. Harlow	R6–89–36
Service Bus Co., Inc. (Administrative Law Judge Order).	R1–89–05

Issued on: October 15, 1990.

T.D. Larson,

Administrator.

In the Matter of Autotrans, Inc.

[Docket No. R1–90–10 (Formerly R1–90–150)]

Order Appointing Administrative Law Judge

This matter comes before me upon request of the Respondent for an administrative hearing to contest the alleged violations charged in a Notice of Claim dated June 26, 1990. The Notice alleged 25 violations of 49 CFR 395.8, failing to retain supporting documents with records of duty status for a period of 6 months, and 6 violations of 49 CFR 396.3, failing to keep minimum records of inspection and maintenance. The Regional Director, Office of Motor Carrier Safety, Region 1, does not raise any objection to the request.

Respondent contends that with respect to the 25 violations of § 395.8, the records have been retained, were made available to the inspectors and remain available. With respect to the 6 violations of § 396.3 respondent contends that records are retained, were made available and remain available.

Therefore, it is hereby ordered, That Respondent's request for a hearing is granted. In accordance with 49 CFR 386.54(a), I hereby appoint an Administrative Law Judge to be designated by the Chief Administrative Law Judge of the Department of Transportation, as the Presiding Judge in this matter. The Judge appointed is authorized to perform those duties specified in 49 CFR 386.54(b).

Dated: September 1, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Propane Transportation Corp.

[Docket No. R1–90–09 (Formerly R1–90–143)]

Order Appointing Administrative Law Judge

This matter comes before me upon request of the Respondent for an administrative hearing and a denial of alleged violations of the Hazardous Materials Transportation Act and regulations issued thereunder.

The Regional Director, Office of Motor Carrier Safety, Region 1, does not oppose the request for a hearing. The Regional Director, by Notice of Claim letter dated June 18, 1990 alleged 20 violations of the regulations, specifically requiring or permitting a driver to make false entries upon a record of duty status while transporting a hazardous material.

For the most part, Respondent's denial is in broad general terms. It is difficult to determine the precise nature of the denial without a full record before me. However, it has been settled, and accepted by this Agency that responsibility cannot be escaped if it can be shown that Respondent had the means to detect the alleged violation, see *Riss & Co.* v. *U.S.*, 262 F.2d 245, 250 (8th Cir., 1958) and *U.S.* v. *Time-DC*, Inc., 381 F. Supp. 730, 739 (W.D. Va., 1974).

I will appoint an Administrative Law Judge to ascertain (1) whether there are false entries upon the records of duty status, as alleged, and (2) whether Respondent had the means to detect and eliminate such violations.

Therefore, it is ordered, That Respondent's request for a hearing is granted. In accordance with 49 CFR 386.54(a), I hereby appoint an Administrative Law Judge to be designated by the Chief Administrative Law Judge of the Department of

Transportation, as the Presiding Judge in this matter. The Judge appointed is authorized to perform those duties specified in 49 CFR 386.54(b).

Dated: September 11, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the matter of RAJ Chemicals, Inc. of Virginia

[Docket. No. R3-90-055]

Final Order

This matter comes before me upon request of the Respondent for a hearing and Motion in opposition thereto and Motion for a Final Order filed by the Regional Director, Office of Motor Carrier Safety, Region 3. On December 14, 1989, the Regional Director sent the Respondent a Notice of Claim alleging 6 violations of the Hazardous Materials Regulations. The specific violation involved the offer of a shipment of hazardous materials for transportation in commerce that was not properly classed, described, packaged, marked, labeled and in condition for shipment, in violation of 49 CFR 171.2(a), (49 CFR 173.22(a).

Respondent denies the alleged violations and contends that its agent, an independent contractor, was the shipper and had sole and total control over the shipments in question. Respondent also questions the validity of the complaint and contends that it did not "knowingly" violate any regulation.

The Regional Director correctly points out that all three of Respondent's arguments are legal, not factual in nature. Respondent offers a Terminal Throughput Agreement to support its contentions. The terms of the Agreement facially support the Regional Director. Any dispute as to the applicability of its provisions is a matter to be resolved between RAJ and First Energy Corporation, not by an Administrative Law Judge in an administrative forum.

Likewise, Respondent's second and third supporting arguments for a hearing are not factual. In fact, argument number 2 is misplaced and not relevant to this proceeding. Argument number 3 appears to invoke a layman's understanding of the term "knowingly". Substantial case law exists on which basis this contention could be disposed, even were it properly before me.

Therefore, it is ordered, That Respondent's request for a hearing is denied as it fails to properly raise material factual issues in dispute. The Regional Director's Motion for a Final Order is supported by the record before me and it is granted. Respondent shall pay to the Regional Director the sum of $9,000 within 30 days of the date of this Order.

Dated: September 11, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the matter of Browning Services, Inc.

[Docket. No. R3-90-08 (Formerly R3-90-212)]

Order Appointing Administrative Law Judge

This matter comes before me upon request of Respondent for an administrative hearing and opposition thereto filed by the Regional Director, Office of Motor Carrier Safety, Region 3 (hereafter referred to as Petitioner).

On July 16, 1990, Respondent was sent a Notice of Claim and Notice of Abatement. Therein it was alleged that Respondent was in violation of the Financial Responsibility portions of the Federal Motor Carrier Safety Regulations (FMCSRs) by virtue of its operation in interstate commerce without the requisite levels of insurance.

Respondent operates tow trucks. On occasion, Respondent admittedly tows vehicles across state lines. Respondent contends that the act of towing is legally distinguishable from transporting in interstate commerce subject to the provisions of the FMCSRs.

Petitioner contends that the act of providing towing services for remuneration is covered by the regulations when interstate travel is involved.

Petitioner argues that Respondent's contentions are legal and that there are no material factual issues involved. Therefore, Petitioner contends the request for a hearing must be denied. Respondent apparently concedes that its objections are primarily legal. Nevertheless, Respondent requests a hearing and attempts to differentiate between the acts of towing for remuneration and transportation for hire.

Ordinarily, such arguments are law school balderdash. The government of the United States has no time to enter into semantic metaphysics, particularly where the lives and well-being of its citizens are placed in limbo. The government does acknowledge, on the other hand, that all its citizens are important to it. Much is written and spoken today about the onerous requirements of government regulations on individuals, small businesses and even large entities. We all feel aggrieved at one time or another.

It must be understood that Congress enacts laws. The Executive Branch implements those laws. At times there is wide discretion in implementing the law, at times there is no discretion. The financial responsibility requirements are laid out in statute. It is not for us to say that $500,000 is enough coverage; it is not for Respondent to say $500,000 is enough coverage. Congress has spoken.

It does not advance the cause of safety for Respondent and Petitioner to carry on in petulant disagreement over the applicability of the law. Respondent should note that the maximum penalty for this alleged violation is $10,000 per violation. Respondent cannot operate for very long in the face of such fines.

At the same time, Petitioner has been admonished in the past about the need to exercise discretion in fostering compliance with this requirement and others when dealing with small operations, some of which have little familiarity with these regulations.

Respondent seeks a definitive interpretation of his inclusion under these regulations. If Respondent chooses to argue his point in a Court of law, he may withdraw his request for a hearing and I will grant a Final Order upon which he may proceed with a legal action. I feel strongly this will only delay the inevitable.

I am therefore assigning an Administrative Law Judge to hear Respondent's arguments on the differentiation between towing for remuneration and transportation for hire. I am doing so in the face of longstanding interpretations which efface any distinction in the hope that a decision by an Administrative Law Judge will constitute sufficient authority for Respondent to comply. Normally, I would even consider a reduction of the penalty in such a case where a positive attitude towards compliance is evident. In this matter, Respondent's shows absolutely no willingness to comply without formal edict. Accordingly, the Judge appointed is to consider the factual nature of Respondent's argument only. I will entertain no recommendation for reduction of this penalty in the event that the Judge finds Respondent is covered by the regulation.

Therefore, it is ordered, That Respondent's request for a hearing is granted and Petitioner's request for a Final Order is denied. In accordance with 49 CFR 386.54(a), I hereby appoint an Administrative Law Judge to be designated by the Chief Administrative Law Judge of the Department of Transportation, as the Presiding Judge in this matter. The Judge appointed is authorized to perform those duties specified in 49 CFR 386.54(b). The Judge may make factual determinations or recommend conclusions of law,

however, the amount of the penalty is beyond the scope of this proceeding.

Date: September 6, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Woodbury Horse Transportation, Inc.

[FHWA Docket No. R1–88–1 (Motor Carrier Safety)]

Order of Administrative Law Judge Served September 4, 1990; Errata

Served September 5, 1990

		Reads	Should read
Page 5.....	Line 23	1990	1989
Page 30.....	Line 20	October 28	October 29

Dated: September 5, 1990.

Ronnie A. Yoder,

Administrative Law Judge.

In the Matter of Woodbury Horse Transportation, Inc.

[FHWA Docket No. R1–88–1 (Motor Carrier Safety)]

Order of Administrative Law Judge

This proceeding arises from a Notice of Claim dated April 7, 1988, alleging violations of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399) and Woodbury Horse Transportation's request for hearing. The undersigned administrative law judge was assigned to the proceeding by Notice dated December 6, 1988, pursuant to the order of the Associate Administrator for Motor Carriers dated December 1, 1988, and the request of the Assistant Chief Counsel for Motor Carrier and Highway Safety Law dated December 5, 1988.

On May 16, 1989, the Regional Director moved for summary judgment on the ground that Respondent failed to respond to a request for admissions served February 17, 1989, that pursuant to 49 CFR 386.44(a)(2) those requests were thereby deemed admitted, that Respondent failed to comply with the Regional Director's request for interrogatories and production of documents or the Judge's order dated April 26, 1989, directing the filing of such answers and documents, and that the answers filed were not attested as required by the FHWA Rules (49 CFR 386.42(b)) and the Federal Rules of Civil Procedure.

Respondent filed no answer to the Regional Director's motion within the seven-day period permitted by the Rules.[1] Respondent did belatedly on May 8, 1989, file answers to interrogatories and to the request for admissions. That filing did not attempt to provide good cause for Respondent's failure to file an answer to the request for admissions within the time prescribed by the Rules.

Those Rules provide that each request for admission is deemed admitted unless a written answer is filed within 15 days after service (49 CFR 386.44(a)(2)) and that "any matter admitted is conclusively established" unless the judge permits withdrawal or amendment (49 CFR 386.44(b)). Respondent made no effort to justify the failure to make a timely response or to seek relief from that failure. Accordingly, as indicated by the Rules the admissions requested encompassing the allegations of violation were deemed to be conclusively established.[2]

On the basis of Respondent's admissions and failure to comply with the discovery requests and the Judge's Order and to answer the subject motion, we concluded that' summary judgment should be entered against Respondent.

The Notice of Claim dated April 7, 1988, alleged six violations of 49 CFR 395.3(a), which involved requiring or permitting drivers to drive more than 10 hours, and four violations of 49 CFR 395.3(b), which involved requiring or permitting drivers to drive after having been on duty more than 70 hours in eight consecutive days. The facts established by the request for admissions, which are deemed admitted and conclusively established under the FHWA Rules, substantially established the violations and Respondent's liability. Admissions one (1) through twenty-three (23) show that Respondent's drivers exceeded the hours of service requirements as set forth in the Notice of Claim and thus violated 49 CFR 395.3(a) and 49 CFR 395.3(b).

Respondent also ignored the initial request for production of documents including current drivers' daily logs. The documents were sought by Regional Counsel to establish a continuous and current pattern of noncompliance and show that any disciplinary program of the Respondent, if one exists, is mere "lip service." Respondent's failure to submit the documents raises an inference that violations would be established if the requested documents were produced.

Respondent's answer dated August 18, 1988, p. 3, asserted affirmatively that the violations do not warrant a fine of $1,000 per violation (*i.e.* a total of $10,000 as requested in the complaint) in view of Respondent's "past history, which does not, in any way, indicate a pattern of serious safety violations, and its financial status, which can be described as hardship, at best." Respondent, however, waived its opportunity to present those defenses by its failure to comply with the Regional Counsel's production requests and the Judge's Order directed to those issues.

Accordingly, we concluded that summary judgment in favor of the Regional Director could and should be entered,[3] and summary judgment was entered against Respondent Woodbury Horse in the amount of $10,000.

Upon review by the Associate Administrator for Motor Carriers this proceeding was remanded to the Judge (Order dated September 25, 1989) to

> review the facts and arguments surrounding the decision to find that the Respondent did not comply procedurally with the rules on the request for Admissions and Interrogatories, and more importantly to provide a complete review over the circumstances surrounding the failure to respond to the Motion for the Summary Judgment.

That remand order further stated that

> Should the Judge determine that his original findings are correct and that Respondent did, in fact, receive and have ample opportunity to reply to the Motion for Summary Judgment, I would welcome his recommendation on possible disciplinary action.

Thereafter, by Order dated October 23, 1989, the Judge scheduled a prehearing conference for December 5, 1989, and directed each party to file a statement by November 9, 1989, setting forth in separately numbered paragraphing each fact and conclusion of law alleged by each party and directed each party to answer by

[1] 49 CFR 386.35(c). By letter dated June 1, 1989, a secretary in the law firm representing Respondent asked for a copy of the summary judgment motion and a ten-day period in which to answer that motion. That letter indicated that the attorneys for Respondent had been aware of the motion since at least May 24, 1989. They nevertheless filed no answer, no request for a copy of the motion, and no motion for extension of time. The secretary's letter did not state that the motion was not served or received, did not purport to show good cause for the extension, for failure to file an answer or comply with the Judge's prior Order, or to emanate from the attorneys or be authorized or directed by them. Moreover, even if authorized by or submitted on behalf of the attorneys, we do not consider such a letter from an attorney's secretary to the Judge received after the time to answer had expired and at least twelve days after the motion for summary judgment was known to be pending to be an appropriate or timely request for an extension of time, to be an appropriate pleading in appropriate form, or to show good cause for relief.

[2] See Order dated June 13, 1989, pp. 2–4.

[3] See Order dated June 13, 1989, pp. 6–8.

November 24, 1989, admitting or denying or otherwise pleading with respect to each alleged fact and proposed conclusion of law. Both parties filed the statements required by November 9, 1989, and the Regional Director filed a timely answer. Respondent failed to file a timely answer by November 24, 1989, as directed by the Judge's order.

On November 30, 1989, at 3:21 p.m., Kenneth Piken sent to the Judge and the Regional Director a telefax copy of an "Answer" bearing a November 24, 1989, date and an affidavit of service dated as of November 24, 1989, enclosed in an envelope which was meter stamped November 24, 1989, but bore a cancellation stamp dated November 30, 1989. That document was received by telefax on November 30, 1990, after the Judge was notified by Mr. Piken's office at 10:10 a.m. on that date that no such answer was in their file (PHC Tr. 12). Since a filing is not complete until received,[4] even under the most generous reading of that document and the circumstances surrounding its filing, it was not filed on time.[5] Moreover, the circumstances of its filing raise serious questions concerning the accuracy of the affidavit of service. By letter dated November 29, 1989, the Regional Director requested that sanctions be imposed against Respondent for its failure to file a timely answer and that the Regional Director's allegations of fact and conclusions of law be deemed admitted. No response to that request was ever filed.

The substance of Respondent's belated "Answer" contained numerous inaccurate and improper pleadings as acknowledged at the prehearing conference on December 5, 1989. See *infra* and PHC Tr. 20, 26, 27 (denial of para. 2 changed to "Admits") 28, 29, 30 (denial of paras. 4 and 5 changed to "Admits"), 32 (denial of para. 9 changed to "Admits"), 36 (denial of para. 11 changed to "Admits"). Mr. Piken did not appear at that prehearing conference, raising serious difficulties in attempting to obtain explanations for the positions taken by the Piken firm on behalf of Woodbury Horse or itself (PHC Tr. 21–23).

Woodbury Horse and the Piken firm were represented at the prehearing conference by Robert B. Walker of Sims, Walker & Steinfeld. At that time Mr. Walker was cautioned about the risk of criminal prosecution for false statements and perjury (PHC Tr. 7–8, 56), references to the bar for disciplinary action (PHC Tr. 56), and conflict of interest (PHC Tr. 35, 55, 57) inherent in these proceedings.

At the prehearing conference the issues on remand were established, and the fact issues framed by the parties' previous pleadings were substantially narrowed by admissions of counsel for Woodbury Horse that pleadings previously served by Piken & Piken were incorrect. Each of the following allegations of the Regional Director was admitted in Respondent's response or at the prehearing conference:

1. Regional Counsel filed interrogatories, requests for admissions, and requests for production of documents on February 17, 1989.[6]

2. Respondent failed to respond to the request for admissions within 15 days of service.

3. On March 20, 1989 a notice of deemed admissions was filed and served by Regional Counsel.[7]

4. Respondent failed to reply to the interrogatories within 30 days of service thereof.

5. Respondent failed to respond to the Notice to Produce within 30 days of service thereof.

6. Regional Counsel filed and served a motion to compel a response to the request for production of documents and to the interrogatories on March 29, 1989.[8]

7. The Respondent failed to reply to the motion to compel.

8. On April 26, 1989, the Judge issued an order compelling a response within 15 days to the interrogatories and request for production of documents only. The Judge further determined that the requests for admissions were deemed admitted pursuant to 49 CFR 386.44.

9. On May 11, 1989, Respondent filed and served a response to the interrogatories which was neither sworn nor signed by the person answering.

10. 49 CFR 386.42(b) requires responses to interrogatories to be signed and sworn to by the person answering.

11. Respondent failed to respond to the Notice to Produce in direct violation of the Judge's order of April 26, 1989.[9]

12. Respondent submitted a response to the request for admissions in violation of the Judge's order of April 26.[10]

13. The Piken firm has offered no explanation as to its failure to respond to the request for admissions within the prescribed time period, despite many opportunities to do so.

14. The Piken firm has offered no explanation for its total failure to respond to the notice to produce despite many opportunities to do so.

15. Regional Counsel filed a motion for summary judgment on May 16 which was served on respondent by certified mail.[11]

18. An employee of the Piken firm conveyed a letter dated June 1, 1989, to the Judge requesting an additional 10-day period to respond to the motion and requesting a copy of the motion.

19. The June 1 letter was not served in accordance with the Rules of Practice, 49 CFR part 386.

20. In a letter dated June 30, 1989, Attorney Kenneth Piken asserted that the letter was not authorized and therefore the secretary, acting without authority, was not bound by the canons of ethics.

21. In Respondent's petition for review dated July 20, 1989, the Piken firm asserted that the letter of June 30 was expressly authorized by Kenneth Piken.

Respondent denied allegations 16, 17 and 22:

16. A certified mail receipt shows receipt (of Regional Counsel's motion for summary judgment) by an agent of the Piken law firm on May 19 (Sandra F).

17. The signature of Sandra F matches her signature on other documents.

22. The assertions by the Piken firm as to the authorization of the June 30 letter are in

[4] 49 CFR 386.2. Five days are added to the due date when documents are mailed, so filing was required by November 29, 1989. No request to late file was ever made, and no effort was made to show good cause for the failure to file.

[5] The filing was due on November 29, 1989, and a fax copy was received by the Docket on November 30, 1989. A hard copy of the filing was not received until December 4, 1989.

[6] Respondent confirmed at the prehearing conference that its initial assertion of lack of knowledge and information related only to the date of filing, which does not present a triable issue of material fact. The docket shows that the document was served on February 17 and filed on February 22, 1989.

[7] Respondent confirmed at the prehearing conference that its initial assertion of lack of knowledge and information related only to the date of filing, which does not present a triable issue of material fact. The docket shows that the document was served on March 20, 1989, and filed between March 20 and March 31, 1989. (The actual filing date is not stamped on the document.)

[8] Respondent confirmed at the prehearing conference that its initial assertion of lack of knowledge and information related only to the date of filing, which does not present a triable issue of material fact. The docket shows that the document was served on March 29 and filed on March 31, 1989.

[9] Respondent confirmed at the prehearing conference that he would accept the Regional Director's assertion that no production occurred. PHC Tr. 34.

[10] Respondent confirmed at the prehearing conference that it only questioned whether its filing of the response violated the Judge's Order of April 26 deeming the requests admitted. PHC Tr. 36–37.

[11] Respondent confirmed at the prehearing conference that its initial assertion of lack of knowledge and information related only to the date of filing, which does not present a triable issue of material fact. The docket shows that the document was served on May 16 and filed on May 22, 1989.

direct contradiction and represent a falsehood presented to the Judge and Associate Administrator.[12]

Thus the primary fact issue to be determined on remand related to the certified mail receipt allegedly signed by an agent of the Piken firm, Sandra F. A further issue was identified at the prehearing conference relating to the circumstances of the service and filing of Respondent's answer dated November 24, 1989.

Respondent never filed any explanation of its failure to timely file its answer to the filing of the Regional Director and never sought relief from its failure to timely file. Under normal circumstances a single failure to timely file might not warrant the entry of default. In this case, however, where there is a history of failure to comply with the Rules of the FHWA and orders of the Judge, where the case is before the Judge on remand to consider the entry of summary judgment for such past failures and to consider sanctions against counsel, where the belated filing shows a lack of professional responsibility and care in the substance of its submission, and the circumstances of its transmittal raise serious questions about the truthfulness of the accompanying affidavit of service, where Respondent's counsel failed to appear at the prehearing conference scheduled, *inter alia*, to discuss these questions, and where Respondent made no effort to show good cause for the late filing or to request that it be received, we conclude that the filing should not be received, that the pleadings on the Regional Director's Proposed Statements of Fact and Conclusions of Law as amended at the prehearing conference should be taken as admitted, and that summary judgment should be entered against Woodbury Horse on the pleadings.

If Respondent's answer were accepted for filing we would nonetheless enter summary judgment against Respondent because of its failure to file complete or verified answers to the Regional Director's Interrogatories on Remand served January 5, 1990, and its subsequent failure to file a timely answer to the Regional Director's motion for summary judgment on remand served February 22, 1990.

At the prehearing conference when the question of conflict of interest between Respondent and its counsel was raised, the Judge directed that "counsel for Woodbury Horse, specifically Mr. Walker and Mr. Piken" provide the Judge a communication "with respect to the representation of Woodbury Horse and/or Mr. Piken in this proceeding," on or before January 19, 1990. Thereafter, Mr. Walker, by letter to the Judge dated December 22, 1989, stated that:

> Woodbury Horse Transportation, Inc. is seeking new counsel to represent it in any further proceedings. At the present time, Piken & Piken will represent itself. A decision has not been made as to whether Piken and Piken will seek representation by other counsel, but if a decision to do so is made, that fact will promptly be communicated to Your Honor.

No further communication on this subject was received prior to January 19, 1990, the date specified in the Judge's order, and Piken & Piken in fact continued thereafter to represent Respondent.

On January 23, 1990, Piken & Piken served "Respondent's Proposed Procedural Schedule on Remand" as "Attorneys for Respondent;" and on January 30, 1990, Piken & Piken served "Response to Regional Director's First Set of Interrogatories and Notice to Produce upon Demand," which had been served January 5, 1990. That response was timely filed by Piken & Piken as "Attorneys for Respondent" but was not verified as required by the FHWA rules, despite the fact that the verification requirement had been set forth in the January 5 interrogatories and had been specifically addressed at the prehearing conference as a defect in its filing prior to the earlier summary judgment and remand.[13] That defect in Respondent's response was subsequently pointed out in the Regional Director's motion for summary Judgment on remand, but Respondent never sought to explain, excuse, or correct that deficiency. Since those interrogatories related to the central factual issues in dispute and Respondent failed to file responses under oath as required by the rules, that failure likewise warrants the entry of summary Judgment against Respondent on those issues. Moreover, the response, apart from being unsworn, was largely unresponsive, or established admissions against interest contrary to prior submissions in this proceeding.

At the prehearing conference counsel for Respondent stated that Respondent was not asserting that counsel for the Regional Director had created a fraudulent postal receipt. Moreover, in response to the Regional Director's interrogatories, Respondent through Piken & Piken stated that it did not know whether the signature on the postal receipt was that of Sandra Ferrarotti or whose signature it was (Interrogatory No. 6), did not know whether the receipt was fraudulent, and had no evidence or proof that the document was falsified (Interrogatory No. 7).

Absent such a contention or proof that the postal receipt was false or incorrect, the presumption of validity of such a receipt would establish service of the summary Judgment motion,[14] particularly where the signature of Sandra F. was apparently the same as that of Sandra Ferrarotti,[15] an employee of Piken & Piken; where her affidavit failed to deny receipt of the motion or to deny that the signature was hers; where Piken & Piken acknowledged on remand that no records of such deliveries were kept—contrary to its prior submission in the proceeding; and where that firm has in this proceeding established a record of failing to meet procedural dates. Accordingly, Respondent's submissions create no substantial issue for trial on the issue of service of the original summary judgment motion.[16]

The affidavit of Sandra Ferrarotti dated August 7, 1989, submitted by Kenneth Piken with his own affirmation dated August 3, 1989, in support of its petition for review stated that "all legal correspondence entering this office is duly recorded and office records show no certified mailing from Mr. Dymond was received on May 19, 1989." [17]

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[12] The Respondent also asserted in its statement of issues that sanctions should be imposed against counsel for the Regional Director, but Respondent has furnished no substantive support for that suggestion.

[13] The earlier summary Judgment order did not rely on the verification requirement, because it was not cited in the Regional Director's motion; but the requirement was cited by the Regional Director in his brief in opposition to Respondent's petition for review (p. 2, n. 2), was discussed at the prehearing conference (PHC Tr. 30–32), and was specifically cited in the interrogatories which noted that "pursuant to 49 CFR 386.42 you are hereby required to answer the following interrogatories in writing and under oath within thirty (30) days from service hereof."

[14] See *Schultz* v. *Jordan*, 141 U.S. 213 (1981); *Beck* v. *Somerset Technologies*, 882 F.2d 993, 996 (5th Cir. 1989); *Hollis* v. *Bowen*, 832 F.2d 865 (5th Cir. 1987).

[15] Respondent at the prehearing conference admitted that the signature "bears a resemblance to the signature of Sandra Ferrarotti." PHC Tr. 44.

[16] Respondent asserted in its statement of issues that an affidavit of Jose Sprauve, Branch Supervisor, U.S. Postal Service, Rego Park, New York, showed that that office had no record of the certified letter in question being received by that office and that all certified mail deliveries to Piken & Piken are delivered by that office. That affidavit does not rebut or impugn the presumptive validity of the postal receipt, since the affidavit does not state that the letter was not received or delivered by the Postal Service or by that branch office, but only that the branch office had no record of such receipt or delivery.

[17] That affirmation, which states that Mr. Piken was duly sworn but is not notarized, was sent by letter dated August 3, 1989, with an unsigned

Continued

Moreover, the Respondent's statement of allegations and contentions dated November 3, 1989, stated that "meticulous office records" showed no receipt of the motion:

6. Sandra Ferrarotti, the secretary who allegedly accepted the certified mailing, has sworn that she is often not yet at work when the mail is delivered, she consistently signs her full name to mailings received and that meticulous office records do not show any mailing received from Regional Counsel on the day in question.[18]

Nevertheless, the response to interrogatories served January 30, 1990, stated that no such system for recording mail, and no such records, existed. Interrogatory No. 2 said: "State the procedure used by the Piken firm in recording the receipt of incoming correspondence and other types of mail." Piken & Piken replied:

No system is utilized for recording the receipt of incoming correspondence other than whoever happens to be present when the mail arrives by postal carrier, receives the mail, signs for any certification, the mail is then transmitted to a partner of the firm, who opens all mail, date stamps the receipt of same and distributes.

Interrogatory No. 9 asked:

State which office records respondent is referring to when it cites "meticulous office records" in paragraph 6, Part II Motion for Summary Judgment, in respondent's Statements of Fact and Conclusions of Law, dated November 3, 1989.

Piken & Piken responded: "All office records."

Notice to Produce No. 1 asked for "Logs for the receipt of certified mail and first class mail for May 19, 1989 for the firm of Piken & Piken," and that firm responded:

No logs for receipt of certified or first class mail are kept by the law firm, however, periodic checks, when the need arises, are made with the United States Postal Service.

These submissions appear to directly conflict with the previous affidavit of Sandra Ferrarotti submitted by Piken & Piken in support of their petition for review.

On February 22, 1990, the Regional Director moved for an order granting summary judgment on remand pursuant to 49 CFR 386.35, reaffirming the previous grant of summary judgment, finding that Respondent's counsel has acted in violation of standards of conduct for attorneys in FHWA proceedings, and imposing sanctions or issuing an order to show cause with respect to such imposition after a hearing on such sanctions. As grounds for that motion the Regional Director asserted a "pattern of neglect and contemptuous conduct," (p. 1) including:

1. Failure to respond to the request for admissions within the period specified by the rules of practice.
2. Failure to respond to interrogatories and a notice to produce.
3. Filing a response to request for admissions without a request for leave to late file, or a showing of good cause for failure to timely file, and after an order of the Judge recognizing the requests were deemed admitted pursuant to the FHWA's rules.
4. Failure to respond to the Judge's order to produce.
5. Failure to submit sworn answers to interrogatories as required by the FHWA's rules.
6. Failure to answer the motion for summary judgment.
7. Causing an *ex parte* communication to the Judge, requesting a copy of that motion and requesting an extension of time to answer the motion.
8. Submitting conflicting and disingenuous representations to the Judge, first that the *ex parte* submission was authorized and subsequently that it was not.
9. Failing to file a timely answer to the issues on remand as required by the Judge's order.
10. Filing and serving an untruthful affidavit of service with respect to that pleading.
11. Failing to file sworn responses to interrogatories on remand.
12. Filing responses which reflected a lack of candor and outright deceit, and which were intended to delay these proceedings.

In addition, the Regional Director asserted that Respondent had proffered no contention or evidence to rebut the presumption of service arising from the signed receipt and that sanctions against Piken & Piken and Kenneth Piken are within the power of the FHWA and within the scope of this proceeding following a hearing, which that motion suggested should be held prior to the imposition of sanctions. As noted above, we agree with the Regional Director's contention concerning the presumption of service, and accordingly we conclude that that summary judgment should be entered on that basis.

No answer to that motion was filed by March 6, 1990, the due date under FHWA rules. By letter dated March 7, 1990, Piken & Piken, sought to obtain an extension of time for "their client" Woodbury Horse, while at the same time asserting that they no longer represented Woodbury Horse. Thereafter, Robert A. O'Rourke, an attorney with the firm of Piken & Piken filed an affidavit dated March 23, 1990, seeking similar relief. By Order dated March 28, 1990, the Judge denied the request of Piken & Piken noting that while they were still counsel of record for Woodbury Horse, they asserted a conflict with their client, and that respondent should have an opportunity to make one further submission to address the status of its representation, its failure to answer the motion for summary judgment, and any appropriate response to that motion:

Woodbury Horse apparently had notice of the motion for summary judgment no later than February 26, 1990. Piken & Piken immediately told Woodbury Horse; and contrary to counsel's assertions they still are counsel of record for Woodbury. They have not filed a motion to withdraw or to substitute counsel. Indeed on January 30, 1990, Piken & Piken filed on behalf of Woodbury Horse a "Response to Regional Director's First Set of Interrogatories and Notice to Produce Upon Remand." Moreover, Piken & Piken's letter states that if an extension to April 30 was not granted, Piken & Piken will file a response on behalf of Woodbury Horse by March 23, 1990. By affidavit dated March 23, 1990, that date is amended to April 6, 1990.

None of these requests are appropriate. Piken & Piken is still counsel of record for Woodbury Horse. Counsel did not respond to the motion for summary judgment or seek an extension within the time prescribed by the rules, *i.e. 7 days (49 CFR 386.35(c)), plus 5 days for service by mail (49 CFR 386.32(c)(3)), to wit March 6, 1990. Moreover, such a request for extension must be in the form of a motion (49 CFR 386.35(a)), not a letter or affidavit as in counsel's submission dated March 23, 1990. Counsel notes that the firm has a conflict with its client, that it no longer represents the client, but nevertheless repeatedly refers to Woodbury Horse as its client, seeks an extension of its behalf, and proposes to file an answer to the motion for summary judgment on its clients' behalf if the extension to April 30 is not granted.*

We will not grant the requested extensions. Counsel has not officially withdrawn its representation of Woodbury Horse; but it has stated that it no longer represents Woodbury Horse in this proceeding and has acknowledged that it had a conflict with Woodbury Horse. Given these submissions by Piken & Piken we cannot treat that firm as appropriate counsel of record for Woodbury

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certificate of service attesting to service on August 3, 1989, and enclosed Ms. Ferrarotti's affidavit notarized four days later on August 7, 1989.

[18] Her affidavit stated that "I have no recollection of signing for or receiving the correspondence from Mr. Kenneth Dymond, known as a Motion for Summary Judgment," "that I often am not present when the mail is delivered," and that "when I do sign for certified mail, I consistently sign my full name to the receipt," as well as the assertion quoted above that "all legal correspondence entering this office is duly recorded and office records show no certified mailing from Mr. Dymond was received on May 19, 1989." Affidavit dated August 7, 1989, paras. 2, 3, 4, 5. The affidavit did not mention "meticulous office records."

Horse or authorize its filing of a response on Woodbury Horse's behalf. Woodbury Horse has had at least three months to obtain other counsel and has not done so. Woodbury Horse had notice of the procedural posture of the case and the need for new counsel and has failed to obtain counsel, to file a response to the summary judgment motion, or to file a timely or appropriate request for extension of time. Nevertheless, we will afford Woodbury Horse an opportunity to make one further submission in this matter on or before April 30, 1990. That submission should address the status of its representation, its failure to answer the motion for summary judgment, and any appropriate response to that motion.

By letter dated April 24, 1990, Arthur Piken wrote the Judge on behalf of Piken & Piken stating "please deem this letter to be formal advice that this office will not represent the interests of any former client," Woodbury Horse, and that:

A motion will be filed by express mail on Friday, April 27th, for formal request to be relieved. The reason for the letter is that the litigation partner in this firm, Kenneth Piken, is currently engaged in a trial in the United States District Court [and] the motion for being relieved as counsel of record will be made when Kenneth Piken, the attorney of record in this proceeding concludes his trial.

No such motion was ever filed.

The Piken letter also stated that he had advised his client of the April 30 deadline in a letter which could not be provided to the Judge because of the attorney-client privilege. That letter also stated that Sims, Walker & Steinfeld would not be retained by Woodbury Horse.

By letter dated April 24, 1990, Ronald G. Vercesi, President of Woodbury Horse, stated that he had relied on his attorney to ensure that this matter was "properly handled." That letter did not otherwise attempt to explain the failure to file a response to the motion for summary judgment or address the substance of that motion. Rather he stated that he had incurred legal fees of $8,000, that his attorneys had advised that they could no longer represent him, that he was sorry for the violations, that they would not recur, that a $10,000 fine would "immensely hurt" the company, and that he asked for "mercy" and "leniency" to "give our company a chance to continue to exist." Accordingly, summary judgment can and should be entered on the basis of Respondent's failure to answer the motion for summary judgment on remand, and the amount of that judgment should be amended to reflect the agreement of the parties in the proffered settlement.

Mr. Vercesi's letter enclosed a letter from Arthur Piken to Mr. Vercesi, dated April 5, 1990, which stated that that firm could not continue to represent Woodbury Horse, recommended other counsel, and stated *inter alia* that:

1. The appeal was successful and the appeal level remanded the case back to the same Judge, unfortunately.

2. At this point, it is now apparent that the Judge is very much against our firm, inasmuch as his mind has been poisoned by the Regional Counsel.

3. This [prehearing] conference turned out to be a total "snow-job" and turned into a session whereby Bob Walker of Sims, Walker & Steinfeld spent virtually an entire day [the conference was held between 10:00 a.m. and 12:05 p.m.] listening [to] Regional Counsel agreeing with the Judge, and the Judge agreeing with Regional Counsel why their firm should not be "sanctioned."

4. The Regional Director/Counsel filed a new Motion for Summary Judgment [February 26, 1990]. We immediately wrote to the Regional Director for an extension so that you could obtain suitable replacement counsel * * *. [As noted above, Piken & Piken wrote a letter to the Judge dated March 7, 1990, after the time to reply had expired.]

5. We immediately filed a motion for extension of time [no motion was filed], and we currently have until *April 30, 1990* in which to answer this latest motion for Summary Judgment. [No extension was granted, though Woodbury Horse, not Piken & Piken, was granted leave to make one additional submission.] [Emphasis in original.]

6. I enclose the latest Order of the Administrative Law Judge. As you can readily see, this is a complete and utter set-up.

Since these letters were not filed or served, the Judge sent a copy of each to each party and the docket; and since the Piken & Piken letter seriously misrepresented the events and status of the proceeding, the Judge sent a copy of each order in the proceeding and the prehearing conference transcript to Mr. Vercesi on May 3, 1990.

By letter dated March 12, 1990, the Regional Director requested that Piken & Piken be made a party to this proceeding. By order dated March 28, 1990, we declined to make Piken & Piken a party to the proceeding at that time, since that firm continued as counsel of record, and it had not responded to the Regional Director's request, which was not filed as a motion under the rules. That Order noted that we would reconsider that question if it were resubmitted in an appropriate form following April 30, 1990.

By motion dated May 3, 1990, the Regional Director asked to add Kenneth and Arthur Piken as parties to the proceeding. As grounds for that motion, the Regional Director incorporated the grounds for sanctions stated in the motion for summary judgment on remand and noted the authority of the Judge "to take any action and make all needful rules and regulations to govern the conduct of the proceedings (49 CFR 386.54) and the terms of Associate Administrator's remand order that:

Should the Judge determine that his original findings are correct and that Respondent did, in fact, receive and have ample opportunity to reply to the Motion for Summary Judgment, I would welcome his recommendation on possible disciplinary action.

Kenneth and Arthur Piken filed an answer dated May 23, 1990,[19] asserting that the remand order "clearly indicated that Administrative Law Judge, the Honorable Ronnie Yoder, is free to explore this possibility" ["specific relief against Kenneth and Arthur Piken as to why sanctions should not be imposed"] "at such time as is ascertained by the Judge presiding in this matter that the original motion for summary judgment was, in fact, served upon this office in a proper and timely fashion." Since no such determination had been made at that time, the Pikens suggested that all matters should be "held in abeyance as it relates to this firm." The Pikens also asserted that their presence as parties in the case would pressure Woodbury Horse to settle the proceeding and that one of the cases cited by the Regional Director, *Zola* v. *ICC*, 889 F2d 508 (3d Cir. 1989), did not support sanctions against an attorney. No objection was made to the pendency of the sanction question or the FHWA's jurisdiction in that regard, or to the power of the Judge to add the Pikens as parties under 49 CFR 386.54 and the remand order. Moreover, in view of the conclusion reached above that service is presumptively established by the postal receipt and the lack of any rebuttal of that presumption, and the entry of summary judgment on that issue, we conclude that the Pikens have asserted no valid or timely objection to their addition as parties to this proceeding concurrently with the entry of summary judgment against, and effectuation of the settlement with, Respondent.

By letter dated May 23, 1990, the Regional Director stated that settlement discussions were being initiated directly with Mr. Vercesi. That letter also noted that the Piken letter "seriously misrepresents the facts and fails to detail the allegations against him pertaining to neglect of the matter and submitting false documents," and renewed the request that the Pikens be

[19] That answer was served 20 days after the motion, *i.e.* eight days after the answer was due under FHWA rules, without a request for leave to late file and without any attempt to show good cause for such late filing. 49 CFR 386.35(c), 386.32(c)(3).

added as parties to this proceeding and that sanctions be imposed.

By letter dated July 23, 1990, the Regional Director forwarded an Order and Stipulation of Compromise and Settlement purporting to "settle and compromise this action . . . upon the terms stated herein," including the payment of a $7,000 fine, an undertaking to take remedial measures to avoid the conditions that led to the Administrator's claim, including an adequate safety training course for drivers, use of those drivers to transport cargo, and close monitoring of drivers' logs to insure compliance with federal safety regulations. That letter purported to moot the prior motion for summary judgment with respect to Respondent and to continue that motion with respect to the Pikens. The letter submitted an order for the Judge dismissing the claim against Respondent "in accordance with the terms of the settlement agreement" and retaining jurisdiction over the matter and the parties to resolve the issue of disciplinary action against the Pikens.

While we will effectuate the intent of the settlement we cannot approve that settlement and order in the form submitted, insofar as they reflect no adjudication of the questions presented in the FHWA claim. Such a resolution following the lengthy proceedings to date would be an unconscionable waste of governmental resources.[20]

Nor can the parties enter such a settlement without the Judge's concurrence. A party may withdraw his/her pleading only on approval of the administrative law judge or Associate Administrator. 49 CFR 386.52. Moreover, it is clear that settlement must be approved by the judge, unless a settlement and consent order are submitted directly to the Associate Administrator under 49 CFR 386.21—which was not done here and should not be done where an administrative law judge has been assigned to the proceeding.[21]

While the Pikens have questioned the applicability of the *Zola* case to this proceeding, they have never denied the jurisdiction of the FHWA to impose disciplinary sanctions or the judge to consider such sanctions. Moreover, we tentatively conclude that the imposition of such sanctions is within the authority of the FHWA [22] and that consideration of such sanctions is within the mandate of the Judge in this proceeding.[23]

The record in this proceeding raises the question of multiple violations of the ABA Standards of Professional Responsibility, including the New York Code of Professional Responsibility, which is the jurisdiction in which counsel are admitted to practice. Including to the items specified in the Regional Director's motion for summary judgment on remand, *supra*, pp. 15–16, at least the following derelictions of the indicated disciplinary rules ("DR") of the Model Code of Professional Responsibility (see appendix B) are raised by the record in this proceeding:

1. Failure to respond to the request for admission within the period specified by the rules of practice. DR 1–102(A)(1)(5)(6), DR 6–101(A)(2)(3), DR 7–106(A)(C).

2. Failure to respond to interrogatories and a notice to produce. DR 1–102(A)(1)(5)(6), DR 7–106(A)(C).

3. Filing a response to request for admissions without a request for leave to late file, or a showing of good cause for failure to timely file, and after an order of the Judge recognizing the requests were deemed admitted pursuant to the FHWA's rules. DR 1–102(A)(1)(5)(6), DR 6–101(A)(2)(3), DR 7–106(A)(C).

4. Failure to respond to the Judge's order to produce. DR l–102(A)(1)(5)(6), DR 6–101(A)(2)(3), DR 7–106(A)(C).

5. Failure to submit sworn answers to interrogatories as required by the FHWA's rules. DR 1–102(A)(1)(5)(6), DR 6–101(A)(2)(3), DR 7–106(A)(C).

6. Failure to answer the motion for summary judgment resulting in entry of default judgment. DR 1–102(A)(1)(5)(6), DR 6–101(A)(2)(3), DR 7–106(A)(C).

7. Causing an *ex parte* communication to the Judge, requesting a copy of that motion and requesting an extension of time to answer the motion causing a nonlawyer to act as a lawyer in seeking an extension of time in an administrative proceeding. DR 3–101(A), DR 7–110(B).

8. Submitting conflicting and disingenuous representations to the Judge, first that the *ex parte* submission was authorized and subsequently that it was not. DR 1–102(A)(1)(5)(6), DR 6–101(A)(2)(3), DR 7–106(C).

9. Submitting a false affidavit concerning the maintenance of office records at Piken & Piken with respect to the receipt of legal correspondence including certified mail. DR 1–102(A)(4), DR 7–102(A)(2)–(6).

10. Submitting a false, unsigned affidavit of service together with that affidavit. DR 1–102(A)(4), DR 7–102(A)(2)–(6).

11. Failure to file a timely answer to the issues on remand as required by the Judge's order resulting in a default judgment. DR 1–102(A)(1)(5)(6), DR 6–101(A)(2)(3), DR 7–106(A)(C).

12. Filing and serving an untruthful affidavit of service with respect to that pleading. DR 1–102(A) (4), DR 7 102(A)(2)–(6).

13. Failure to file sworn responses to interrogatories on remand. DR 1–102(A)(1)(5)(6), DR 6–101(A)(2)(3), DR 7–106(A)(C).

14. Filing responses which reflected a lack of candor or deceit, and which were intended to delay these proceedings. DR 1–102(A)(1)(5)(6), DR 6–101(A)(2)(3), DR 7–106(C).

15. Failure to answer the motion for summary judgment in remand resulting in a second summary judgment. DR 1–

[20] See *Tourist Enterprises Corporation* "ORBIS", Docket 27914, Notice to All Parties dated July 19, 1977, Recommended Decision dated September 23, 1977, pp. 6–9, 11–12, *aff'd*, Order 78–5–11; *Dominion Intercontinental Airlines Fitness Investigation*, Docket 41035, Supplemental Recommended Decision dated September 13, 1985, pp. 6–9, *aff'd*, Order 86–1–75.

[21] See *Bower Tiling Service*, FHWA Docket No. R5–90–03, Order dated June 18, 1990; *Rodgers Johnson/J and J Bus Service*, Docket R3–89–02, Order dated May 4, 1989.

[22] See, e.g. *Touche Ross & Co.* v. *SEC*, 609 F.2d 570 (2nd Cir. 1979); *Theodore Polydoroff and Timothy C. Miller*, 133 M.C.C. 364 (1984); *John M. Nader*, 364 I.C.C. 83 (1980); *United Air Lines, Inc.* v. *C.A.B.*, 281 F.2d 53 (D.C. Cir. 1960).

[23] On December 8, 1988, the Administrator of the Federal Aviation Administration issued a decision in *Western Airlines* (FAA Docket 85–108), *et al.*, which stated, *inter alia*, that under the Administrative Procedure Act "ALJs lack the authority to modify or add to the procedures provided in published agency regulations, even if the modifications or additions do not actually conflict with specific provisions of the agency's rules." (p. 6.) The decision cites no precedent or other authority for that statement, and the uniform precedent at the Civil Aeronautics Board and theretofore at the Department of Transportation had been that the Judge can adopt any procedures for the conduct of the proceeding consistent with statute, the rules, and considerations of due process and agency policy and precedent. Decisions of the FAA Administrator are not binding in non-FAA proceedings, and the decision of the Administrator in *Western, et al.*, should be limited to its facts and should not be applied in this proceeding. See *Continental Airlines*, FAA Dockets CP89SO0016, *et al.*, Order dated May 4, 1989, p. 4, n. 6; *Robert O. Nay*, DOT Docket 45663, Orders dated February 15 and March 8, 1989. Moreover, as noted above, the FHWA rules specifically permit the Judge to "take any action and to make all needful rules and regulations to govern the conduct of the proceedings to ensure a fair and impartial hearing, and to avoid delay in the disposition of the proceedings." Finally, the ABA Model Code of Judicial Conduct and Model Code of Judicial Conduct for Federal Administrative Law Judges (ABA 1989) also recognize the obligation of the judge to "take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware." Canon 3B(3). Previous decisions have recognized the possible applicability of that Code to administrative law judges at DOT. See *In re Chacallo*, 2 M.S.P.B. 20, Supp. Opinion, p. 53 (1980); ABA Informal Opinion 86–1522, dated December 24, 1986; *Competitive Marketing Investigation*, C.A.B. Docket 36595, Order 36595–418, dated June 29, 1981, p. 2, n. 5; *N.L. Industries Inc.*, FAA Docket 84–29 (HM), Order dated February 13, 1986, pp. 8–9, n. 12, *rev'd on other grounds*, Order of FAA Administrator dated December 8, 1988.

102(A)(1)(5)(6), DR 6-101(A)(2)(3), DR 7-106(A)(C).

16. Continuing to represent Woodbury Horse after the summary judgment was entered when an apparent conflict existed and was pointed out on the record at the PHC. DR 2-110(A), DR 2-110(B) (2), DR 5-101(A), DR 5-102(A), DR 7-101(A)(3).

17. Misrepresenting the facts of the proceeding in a letter to Woodbury Horse. DR 1-102(A)(4), DR 6-102(A).

18. Publishing scurrilous and unfounded accusations against the Judge in that letter. DR 7-106(C), DR 8-102(B).

Those derelictions present possible violations of at least the indicated 25 Disciplinary Rules of the Model Code of Professional Responsibility, which are set forth in Appendix B. In order to ensure a complete and appropriate statement of the violations at issue and assure the availability of any appropriate defense and process to the Pikens before recommending sanctions in accordance with the direction of the remand order, we will direct the Regional Director to file a statement of such charges and a proposed procedural schedule, with an appropriate response by the Pikens.[24]

Accordingly, *it is ordered* 2That:

1. Kenneth Piken, Arthur Piken and the law firm Piken & Piken, P.C. are hereby made parties to this proceeding.

2. Piken & Piken is granted leave to withdraw as attorney for Woodbury Horse Transportation, Inc.

3. The Judge's Order dated June 13, 1989 (appendix A), is reaffirmed with the modification that summary judgment is entered against Woodbury Horse Transportation, Inc. in the amount of $7,000 in accordance with the settlement amount agreed by the parties.

4. By September 28, 1990, the Regional Director shall serve and file a specification of charges against Piken & Piken, P.C., Kenneth Piken, and Arthur Piken detailing each charge with respect to possible sanctions against those parties, including without limitation those specifications set forth herein, together with a proposed procedural schedule.

5. By October 28, 1990, Kenneth Piken, Arthur Piken and Piken & Piken, P.C., shall file an answer to each such charge and a response to the proposed procedural schedule and shall otherwise show cause why an order should not be entered:

a. Finding that the violations set forth therein occurred.

b. Barring them from further practice before the FHWA and the DOT.

c. Referring their actions in this proceeding to the New York State Bar and the Interstate Commerce Commission for disciplinary action.

d. Referring their submissions in this proceeding to the Department of Justice for prosecution.

So Ordered.

Dated: September 4, 1990.

Ronnie A. Yoder,

Administrative Law Judge.

In the Matter of Woodbury Horse Transportation, Inc.

[FHWA Docket No. R1-88-1 (Motor Carrier Safety)]

Order of Administrative Law Judge

Served June 13, 1989.

By motion dated May 16, 1989, the Regional Director moves for summary judgment. As grounds for that motion the Regional Director asserts that Respondent failed to respond to the request for admissions served February 17, 1989, that pursuant to 49 CFR 386.44(a)(2) those requests were thereby deemed admitted, that Respondent has failed to comply with the Regional Director's request for interrogatories and production of documents, or the Judge's order dated April 26, 1989 directing the filing of such answers and documents, and that the answers filed were not attested as required by the FHWA Rules and the Federal Rules of Civil Procedures.[1]

Respondent has filed no answer to the Regional Director's motion within the seven-day period permitted by the Rules.[2] Respondent did belatedly on May 8, 1989, file answers to interrogatories and to the request for admissions. That filing did not attempt to provide good cause for Respondent's failure to file an answer to the Request for Admissions within the time prescribed by the Rules.

Those Rules provide that each request for admission is deemed admitted unless a written answer is filed within 15 days after service (49 CFR 386.44(a)(2)) and that "any matter admitted is conclusively established" unless the judge permits withdrawal or amendment (49 CFR 386.44(b)). Respondent has made no effort to justify the failure to make a timely response. Accordingly, as indicated by the Rules the admissions requested are deemed to be conclusively established.

On the basis of those admissions we find and conclude that:

1. Exhibit 1 attached to Regional Counsel' s request for admissions is a true and accurate copy of the driver's daily logs for September 15 and 16, 1987 for driver Shawn Mertens.

2. Exhibit 2 is a true and accurate copy of driver's daily logs for September 22 and 23, 1987 for driver Wayne Oke.

3. Exhibit 3 is a true and accurate copy of driver's daily logs for driver Kevin Keilly for October 8 and 9, 1987.

4. Exhibit 4 is a true and accurate copy of driver's daily logs for driver Kevin Keilly for October 15 and 16, 1987.

5. Exhibit 5 is a true and accurate copy of driver's daily logs for driver Craig Coffin for October 21 and 22, 1987.

6. Exhibit 6 is a true and accurate copy of driver's daily logs for driver Craig Coffin for December 1 and 2, 1987.

7. Exhibit 7 is a true and accurate copy of driver's daily logs for driver Kevin Keilly for September 16 through 23, 1987.

8. Exhibit 8 is a true and accurate copy of driver's daily logs for driver Keith Craig for October 2 through 9, 1987.

9. Exhibit 9 is a true and accurate copy of driver's daily logs for driver Kevin Keilly for October 3 through 10, 1987.

10. Exhibit 10 is a true and accurate copy of driver's daily logs for driver Craig Coffin for November 8 through 15, 1987.

11. On September 16, 1987, Shawn Mertens drove 14 ½ hours without having 8 consecutive hours off-duty.

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[24] Previous decisions have noted that those Rules are appropriate standards for evaluating ethical conduct of practitioners before the Department. *New York-San Francisco Nonstop Service, Reopened*, 35 C.A.B. 423, 494-95 (1962); *Ephrata/Moses Lake Deletion Case*, 74 C.A.B. 831, 850, n. 45 (1977); *Northeast Imperial Airlines, Fitness Investigation*, 106 C.A.B. 32, 37 (1984); *N.L. Industries* FAA Docket 84-29 (HM), Order dated February 13, 1986, p. 9, n. 12, *rev'd on other grounds*, Order of FAA Administrator dated December 8, 1988.

[1] The Regional Director cites no support for this assertion, and the Rules do not require such attestation or incorporate such a requirement from the Federal Rules. 49 CFR 386.44. Cf. 49 CFR 386.43(c)(4), 386.56(c). Accordingly, we give no weight to Regional Counsel's assertion in this regard.

[2] 49 CFR 386.35(c). By letter dated June 1, 1989, a secretary in the law firm representing Respondent asked for a copy of the summary judgment motion and a ten-day period in which to answer that motion. That letter indicated that the attorneys for Respondent have been aware of the motion since at least May 24, 1989. They have nevertheless filed no answer, no request for a copy of the motion, and no motion for extension of time. The secretary's letter does not state that the motion was not served or received, does not purport to show good cause for the extension, for failure to file an answer or comply with the Judge's prior Order, or to emanate from the attorneys or be authorized or directed by them. Moreover, even if authorized by or submitted on behalf of the attorneys, we do not consider such a letter from an attorney's secretary to the Judge received twelve days after a motion for summary judgment is known to be pending to be an appropriate or timely request for an extension of time, to be an appropriate pleading in appropriate form, or to show good cause for relief.

12. On September 23, 1987, Wayne Oke drove 20 hours without having 8 consecutive hours off-duty.

13. On October 9, 1987, Kevin Keilly drove 12½ hours without having 8 consecutive hours off-duty.

14. On October 16, 1987 Kevin Keilly drove 16½ hours without having 8 consecutive hours off-duty.

15. On October 21 and 22, 1987, Craig Coffin drove 12½ hours without having 8 consecutive hours off-duty.

16. On December 2, 1987, Craig Coffin drove 13 hours without having 8 consecutive hours off-duty.

17. From September 16, 1987, to September 23, 1987, Kevin Keilly drove 39 hours after being on duty 70 hours in 8 consecutive days.

18. From October 2, 1987, to October 9, 1987, Keith Craig drove 11½ hours after being on duty 70 hours in 8 consecutive days.

19. From October 3, 1987, to October 10, 1987, Kevin Keilly drove 28 hours after being on duty 70 hours in 8 consecutive days.

20. From November 8, 1987, to November 15, 1987, Craig Coffin drove 17 hours after being on duty 70 hours in 8 consecutive days.

21. Drivers Shawn Mertens, Wayne Oke, Kevin Keilly, Craig Coffin and Keith Craig are employees and drive for Woodbury Horse Transportation, Inc.

22. The trips shown in exhibits 1 through 10 (drivers daily logs) involve travel in interstate commerce.

23. Woodbury Horse Transportation, Inc. is subject to the Federal Motor Carrier Safety Regulations, 49 CFR part 383 *et seq.*

On the basis of Respondent's admissions and failure to comply with the discovery requests and the Judge's Order and to answer the subject motion, we conclude that summary judgment may appropriately be entered against Respondent.

The Notice of Claim dated April 7, 1988, alleged violations of 49 CFR 395.3(a), which involved requiring or permitting drivers to drive more than 10 hours, and four violations of 49 CFR 395.3(b), which involved requiring or permitting drivers to drive after having been on duty more than 70 hours in eight consecutive days. The facts established by the request for admissions, which are deemed admitted and conclusively established under the FHWA Rules, substantially establish the violations and Respondent's liability. Admissions one (1) through twenty-three (23) show that Respondent's drivers exceeded the hours of service requirements as set forth in the Notice of Claim and thus violated 49 CFR 395.3(a) and 49 CFR 395.3(b).

Respondent also ignored the initial request for production of documents including current drivers' daily logs. The documents were sought by Regional Counsel to establish a continuous and current pattern of noncompliance and show that any disciplinary program of the Respondent, if one exists, is mere "lip service." Respondent's failure to submit the documents raises an inference that violations would be established if the requested documents were produced.

Respondent's answer dated August 18, 1988, p. 3, asserts affirmatively that the violations do not warrant a fine of $1000 in view of Respondent's "past history, which does not, in any way, indicate a pattern of serious safety violations, and its financial status, which can be described as hardship, at best." Respondent has, however, waived its opportunity to present those defenses by its failure to comply with the Regional counsel's production requests and the Judge's Order directed to those issues.

Regional Counsel submits and we agree that the Judge's authority under the Administrative Procedure Act and the Federal Highway Administration's Rules enables the entry of summary judgment. Section 7(b) of the Administrative Procedure Act, 5 U.S.C. 556(c), provides:

> Officers presiding at hearings shall have authority, subject to the published rules of the agency and within its powers, to (1) administer oaths and affirmations, (2) issue subpoenas authorized by law, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken whenever the ends of justice would be served thereby, (5) regulate the course of the hearing, (6) hold conferences for the settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make decisions or recommend decisions in conformity with section 8, and (9) take any other action authorized by agency rule consistent with this Act.[3]

The FHWA Rules provide:

(b) Power and duties. Except as provided in paragraph (c) of this section,[4] *the administrative law judge has power to take any action and to make all needful rules and regulations to govern the conduct of the proceedings to ensure a fair and impartial hearing, and to avoid delay in the disposition of the proceedings.* His/her powers include the following:

* * * *

(6) To consider and rule upon all procedural and other motions, except motions which, under this part, are made directly to the Associate Administrator.

* * * * *

(8) To make and file decisions; and

(9) To take any other action authorized by these rules and permitted by law." 49 CFR 386.54 (emphasis added).

The Administrative Procedure Act and the FHWA Rules give the Judge broad authority to control the hearing, nothing in the Rules proscribes the entry of such an order, and the Judge is empowered to enter orders not inconsistent with those rules.[5]

We conclude that summary judgment in favor of the Regional Director can and should be entered. Accordingly, IT IS ORDERED THAT:

1. The Regional Director's motin is granted.

2. Summary judgments entered against respondent Woodbury Horse Transportation, Inc., in the findings and conclusions herein.

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[3] The Attorney General's Manual on the Administrative Procedure Act (1947), p. 74, points out that the "quoted language automatically vests in hearing officers [now administrative law judges] the enumerated powers" and that "an agency is without power to withhold such powers from its hearing officers." Accord *Tourist Enterprises Corp. "ORBIS,"* CAB Docket 27914, Recommended Decision, dated September 23, 1977, p. 11, n.9, *adopted*, Order 78-5-17, p. 2. See also Attorney General's Opinion dated January 18, 1977, p. 7.

[4] There is no paragraph (c) in section 386.54.

[5] Compare *Rodgers Johnson/J and J Bus Service*, FHWA Docket No. R3-89-02, Order dated May 4, 1989. On December 8, 1988, the Administrator of the Federal Aviation Administration issued a decision in *Western Airlines* (FAA Docket 85-108), *et al.*, which stated, *inter alia*, that under the Administrative Procedure Act "ALJs lack the authority to modify or add to the procedures provided in published agency regulations, even if the modifications or additions do not actually conflict with specific provisions of the agency's rules." (p. 6.) The decision cites no precedent or other authority for that statement, and the uniform precedent at the Civil Aeronautics Board and theretofore at the Department of Transportation had been that the Judge can adopt any procedures for the conduct of the proceeding consistent with statute, the rules, and considerations of due process and agency policy and precedent. Decisions of the FAA administrator are not binding in non-FAA proceedings, and the decision of the Administrator in *Western, et al.*, should be limited to its facts and should not be applied in this proceeding. See *Continental Airlines*, FAA Dockets CP89SO0016, *et al.*, Order dated May 4, 1989, p. 4, n. 6; *Robert O. Noy*, DOT Docket 45863, Orders dated February 15 and March 8, 1989. Moreover, as noted above, the FHWA rules specifically permit the Judge to "take any action and to make all needful rules and regulations to govern the conduct of the proceedings to ensure a fair and impartial hearing, and to avoid delay in the disposition of the proceedings."

Dated: June 13, 1989.

Ronnie A. Yoder,

Administrative Law Judge.

Appendix B

Model Code of Professional Responsibility (ABA 1986)

DR 1–102(A)—A lawyer shall not:

(1) Violate a Disciplinary Rule.

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

(6) Engage in any other conduct that adversely reflects on his fitness to practice law.

DR 2–110(A)—In general.

(1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

DR 2–110(B)—A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

* * * * *

(2) He knows or it is obvious that his continued employment will result in violation of a Disciplinary Rule.

DR 3–101(A)—A lawyer shall not aid a non-lawyer in the unauthorized practice of law.

DR 5–101(A)—Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests.

DR 5–102(A)—If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm ought to be called as a witness on behalf of his client, he shall withdraw from the conduct of the trial and his firm, if any, shall not continue representation in the trial, except that he may continue the representation and he or a lawyer in his firm may testify in the circumstances enumerated in DR 5–101(B) (1) through (4).

DR 6–101(A)—A lawyer shall not:

* * * * *

(2) Handle a legal matter without preparation adequate in the circumstances.

(3) Neglect a legal matter entrusted to him.

DR 6–102(A)—A lawyer shall not attempt to exonerate himself from or limit his liability to his client for his personal malpractice.

DR 7–101(A)—A lawyer shall not intentionally:

* * * * *

(3) Prejudice or damage his client during the course of the professional relationship, except as required under DR 7–102(B).

DR 7–102(A)—In his representation of a client, a lawyer shall not:

* * * * *

(2) Knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

(3) Conceal or knowingly fail to disclose that which he is required by law to reveal.

(4) Knowingly use perjured testimony or false evidence.

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.

(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

DR 7–106(A)—A lawyer shall not disregard or advise his client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but he may take appropriate steps in good faith to test the validity of such rule or ruling.

DR 7–106(C)—In appearing in his professional capacity before a tribunal, a lawyer shall not:

(3) Assert his personal knowledge of the facts in issue, except when testifying as a witness.

(6) Engage in undignified or discourteous conduct which is degrading to a tribunal.

(7) Intentionally or habitually violate any established rule of procedure or of evidence.

DR 7–110(B)—In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending, except:

(1) In the course of official proceedings in the cause.

(2) In writing if he promptly delivers a copy of the writing to opposing counsel or to the adverse party if he is not represented by a lawyer.

(3) Orally upon adequate notice to opposing counsel or to the adverse party if he is not represented by a lawyer.

(4) As otherwise authorized by law, or by Section A(4) under Canon 3 of the Code of Judicial Conduct.

DR 8–102(B)—A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer.

Yankee Trails Inc.

[Docket No. RI89–07 (Motor Carrier Safety—FHWA)]

Order of Chief Administrative Law Judge John J. Mathias

Appearances:

Edwin J. Tobin, Esq., Gentak, Brown & Tobin, 111 Pine Street, Albany, New York 12207, for Yankee Trails, Inc.

Kenneth Dymond, Esq., Counsel for the Regional Director, Federal Highway Administration, Leo W. O'Brien Federal Building, Albany, New York 12207

Pursuant to the Order Appointing Administrative Law Judge herein, dated May 11, 1989, and the Notice of Claim in this matter, dated March 9, 1989, this is the Administrative Law Judge's decision under Rule 386.61 of the Federal Highway Adminisration's rules of practice and procedure, 49 CFR 386.61.

The Notice of Claim in this matter charges respondent, Yankee Trails, Inc. with the following violations: (1) Two instances in which it failed. to report accidents, in violation of 49 CFR 394.9; and (2) Fifteen instances in which it required or permitted a driver to make false entries upon a record of duty status, in violation of 49 CFR 395.8. After careful consideration of all the evidence of record, I find the violations as charged and assess a civil penalty of $1,800.00.

This decision is based upon the entire record of this proceeding, including: The evidentiary record compiled at the hearing; the proposed findings of fact and reply findings submitted by the parties, and the briefs and reply briefs filed by the parties. I have also taken into account my observation of the witnesses who appeared before me and their demeanor. Proposed findings not herein adopted, either in the form submitted or in substance, are rejected either as not supported by the evidence or as involving immaterial matters.

The findings of fact include references to supporting evidentiary items in the record. Such references are intended to serve as guides to the testimony and exhibits supporting the findings of fact. They do not necessarily represent complete summaries of the evidence supporting each finding.

* * * * *

The following abbreviations are used in this Decision:

Tr.—Page of the hearing transcript, usually preceded by the name of the witness.
CX—Exhibit of Assistant Regional Counsel, also referred to as Complaint Counsel.
RX—Exhibit of Respondent.
CBr.—Complaint counsel's brief.
CRBr.—Complaint counsel's reply brief.
RBr.—Respondent's brief.
RRBr.—Respondent's reply brief.
CPF—Complaint counsel's proposed finding of fact.
RPF—Respondent's proposed finding of fact.

Findings of Fact

A. The Violations Charged

1. Respondent Yankee Trails, Inc., is a corporation having its principal office located at 3rd Avenue Extension, Rensselaer, New York 12144. (Notice of Claim; Tobin, Tr. 192–193, 196–197, 209).

2. Respondent Yankee Trails, Inc., is a carrier of passengers operating in interstate commerce and subject to the Federal Motor Carriers Safety Regulations. (Admitted, see response to CPF 1).

3. A safety compliance review was conducted of respondent in January 1989 by Safety Investigator Christopher Rotondo. (CX 15; Admitted, response to CPF 14).

4. The safety review revealed that reportable injury accidents occurring on August 4, 1988 and September 14, 1988, involving vehicles owned by respondent, were not reported to the Federal Highway Administration within 30 days of occurrence, as required by 49 CFR 394.9. (CX 5, 6; Tobin, Tr. 208–209; Barbour, Tr. 226).

5. The report of the January 1989 safety compliance review, filed by Investigator Rotondo, also indicated that he discovered 20 instances of drivers being required or permitted to make false entries upon a record of duty status in violation of 49 CFR 395.8. The report also noted that Mr. Rotondo had checked 51 records of duty status in making this finding. (CX 5).

6. The Notice of Claim in this matter cites 15 of such instances as violations by respondent of 49 CFR 395.8. (Notice of Claim, Exhibit B).

7. CX 12, 13, and 15–25 reveal fourteen instances of drivers for respondent who were on charter runs omitting the reporting of commuter runs made on the same day. (Stipulation, Tr. 31–32).

8. CX 14 reveals that a driver for respondent did not record a charter trip on his log. (Rotondo, Tr. 33–34).

9. Respondent does not now contest the fact that the omissions noted in findings 4, 7 and 8 above were violations of the Federal Motor Carriers Safety Regulations. Instead, it urges that mitigating circumstances render unfair the penalty proposed by the Federal Highway Administration. (Respondent's Brief and Reply Brief; Opening Statement, Tr. 10–14).

B. Prior Safety Compliance Review

10. Respondent was the subject of safety audits in 1979, 1980, 1982 and 1984. (CX 1, 2, 3 and 4).

11. The 1979 audit did not reveal any instances of failure to report reportable accidents to the Federal Highway Administration. (CX 1).

12. Counsel for the Federal Highway Administration ("Complaint Counsel") have stipulated that there is little or no evidence of false logs in the 1979 audit. (Tr. 93).

13. A second safety audit was conducted in January 1980, by Investigator Nicholas Walsh. (Exhibit 2).

14. The 1980 audit revealed 3 instances of failing to report accidents. (Exhibit 2, Entry C).

15. The 1980 audit also revealed 5 instances of drivers being required or permitted to make false entries on a daily log. (Exhibit 2, Entry I).

16. Mr. Walsh examined 900 logs during his 1980 audit and found only the 5 instances of drivers being required or permitted to make false entries on a daily log. (CX 2, Entry I; Walsh, Tr. 98).

17. There is no reliable evidence to show that Investigator Walsh found any instances of failure to log commuter runs during his 1980 audit. (Walsh, Tr. 97–98).

18. One case of false entry showed the driver off duty when he was taking a charter to Portland. (Walsh, Tr. 98; CX 26, at p. 2).

19. A third safety audit of respondent was conducted in November 1982, by Safety Inspector Ian Smith. (CX 3).

20. The audit report for the 1982 inspection revealed 4 instances of failure to report an accident (CX 3, Entry D).

21. The audit report for the 1982 audit also shows 3 instances, out of 635 logs examined, of drivers being required or permitted to make false entries upon a daily log. (CX 3, Entry H).

22. A fourth safety audit of respondent was conducted by Safety Inspector Ian Smith in November 1984. (CX 4).

23. The audit report for the 1984 inspection revealed 2 instances of failure to report an accident. (CX 4, Entry J).

24. The audit report for the 1984 audit also shows 2 instances, out of 100 logs checked, of drivers being required or permitted to make false entries upon a daily log. (CX 4, Entry M).

25. Inspector Smith did not find any instance of a driver failing to log a commuter run. If a driver took a commuter and charter run on the same day and didn't log the commuter run he would have cited it. He had all the records available to him and found no such instance. (Smith, Tr. 114).

26. Inspector Smith found that the false logs listed in his audits did not warrant further action at the time. (Smith, Tr. 113).

27. In connection with the four prior safety audits of 1979, 1980, 1982 and 1984, there is no evidence of a finding of instances of drivers failing to log a commuter run when required to do so. (Findings 12, 17, 25, *supra*).

C. Other Factors Considered

28. In his experience, Inspector Smith found occasional errors arising from the application of the 100 mile exemption. (Smith, Tr. 121).

29. In each of the 14 instances of failure to log commuter runs found in the 1989 audit, the drivers would not have been in violation of the hours of service regulation if they had recorded commuter runs. (Gruin, Tr. 136).

30. Mr. Gruin, the federal program manager who assessed the claims in this matter, admitted that there was no proof of failure to log commuter runs in each of the audits prior to the 1989 audit. (Gruin, Tr. 125, 127, 136, 147).

31. One of the things an assessing officer should consider is whether prior violations were similar or dissimilar. (Gruin, Tr. 145).

32. Mr. Gruin considered past compliance to Part 395, which included hours of service violations shown on the logs, in assessing the penalty against respondent. (Gruin, Tr. 188).

33. Mr. Gruin admitted that hours of service violations were dissimilar to the false logs charged in the present case. (Gruin, Tr. 188).

34. Mr. Tobin, president of respondent, testified that he was never advised in the past that drivers who were operating charters and commuter runs were deleting the commuter runs from their logs. (Tobin, Tr. 204).

35. Mr. Gruin admitted that there was some confusion in the industry concerning the application of the 100 mile exemption. (Gruin, Tr. 166–167).

36. Mr. Barry Rubinstein, who assisted Inspector Rotondo in the 1989 audit of

respondent, admitted that there could be some confusion in the industry regarding the application of the 100 mile exemption. (RX 2, at 3, 5).

37. Mr. Rotondo's interviews of two of respondent's drivers and respondent's dispatcher indicates that they were not aware that the commuter runs needed to be recorded in the logs. (CX 6).

38. Despite the fact that respondent had been cited in three prior audits for requiring or permitting drivers to make false entries upon a daily log (see, Findings 15, 21, and 24), respondent did not have any employee reviewing logs for falsifications at the time of the 1989 audit. (CX 6, statement of Margaret Barbour).

39. Respondent has now hired a full time employee to check the logs. (Tobin, Tr. 210; Barbour, Tr. 234).

40. No proof of remedying this problem was offered to the Federal Highway officials at the settlement conference. (Gruin, Tr. 178).

OPINION

Respondent has admitted to the violations charged in this case. (Finding 9). The position of the respondent at the hearing and on brief is that mitigating circumstances render unfair the penalty proposed by the Federal Highway Administration. (Finding 9). I find that there are mitigating factors with regard to the failure to log commuter runs, but can find no mitigating factors in connection with the failure to report accidents or the failure to log a charter run.

In three prior audits, in 1980, 1982 and 1984, the inspector found instances of failure to report accidents. (Findings 14, 20 and 23). Certainly by the time of the 1989 audit, respondent should have been well aware of its responsibility under 49 CFR 394.9. The arguments of respondent as to inadvertent failure to file, and that the accidents were promptly reported to the insurance company and state authorities (RBr., at 8) have no bearing on the separate requirement to file accident reports with the Federal Highway Administration. The further argument that these failures were mere record-keeping violations is already implicitly taken into account by the amount of the maximum penalty which can be applied in such cases. (RX 2).

Accordingly, I find that in view of the repeated violations by respondent of 49 CFR 394.9, through the failure to file reports concerning reportable accidents, that the maximum penalty for the two violations of the type found herein should be applied. Thus, I assess a penalty of $1,000.00 for these two violations--$500.00 for each offense.

In connection with the 15 instances with which respondent was charged concerning the falsification of logs in violation of 49 CFR 395.8 (Findings 6–8), I find mitigating circumstances in connection with the 14 instances involving failure of drivers to log commuter runs. However, there have been no mitigating circumstances shown with respect to the one failure to record a charter run in the driver's log. (Finding 8). Therefore, the maximum penalty of $500.00 should be assessed for the latter violation, in view of respondent's prior record of log falsifications. (Findings 15, 18, 21, and 24).

Insofar as the failure to log commuter runs is concerned, the evidence revealed there was some confusion in the industry, and within respondent, concerning the application of the 100 mile exemption. (Findings 28, 34–37). There is also no evidence that this same type violation had been found of respondent in four prior audits. (Finding 30). The log falsification violations found in prior audits were not shown to be similar to the failure to record commuter run violations found in the 1989 audit. (Findings 30, 32 33). Also, in each of the fourteen instances in which the driver failed to log commuter runs, the drivers would not have been in violation of the hours of service regulation if they had recorded their commuter runs. (Finding 29). Thus, respondent had no reason to falsify the logs.

On the other hand, respondent had been charged with requiring or permitting drivers to make false entries upon their logs in each of three prior audits. (Findings 15, 21, and 24). The 1989 audit also found 20 logs out of 51 logs checked to have been falsified. (Finding 5). Moreover, despite the past history of some violations in this regard, respondent had no employee checking the driver's logs to ensure they were prepared in accordance with the federal highway regulations. (Finding 38).

Even considering the fact that the failure to log commuter runs may be dissimilar to prior log falsification charges, and the other mitigating factors above, the large percentage of log falsifications out of the total logs checked in the 1989 audit (20 out of 51—see Finding 5), coupled with respondent's failure to institute any checks of the logs following the three prior audits where log falsifications were found, indicated the need for at least a minimum penalty for these fourteen violations.[1] I find, therefore, that the fourteen instances of failing to log commuter runs should be lumped together as one violation and the minimum penalty of $300.00 should be assessed therefor.

Accordingly, I find that a total penalty of $1,800.00 should be assessed against respondent—$1,000.00 for the failures to report reportable accidents, $500.00 for the failure to log a charter run, and $300.00 for the failure to log commuter runs.

John J. Mathias,
Chief Administrative Law Judge.

In the Matter of Ronald William Dreyer

[Docket No. R5–89–137]

Order Appointing an Administrative Law Judge

This matter comes before me upon Petition to Review Driver Qualification Proceedings Pursuant to 49 CFR § 386.13 (1989) filed by Mr. Ronald William Dreyer, hereinafter referred to as Petitioner. In his petition Mr. Dreyer also requests an oral hearing pursuant to 49 CFR 386.13(a) (1989) to determine whether or not he was on duty time, as defined in § 395.2(a), at the time of the alleged disqualifying offense.

The Regional Director alleged in a Notice of Disqualification dated August 28, 1989, that in the course of an inspection dated July 1, 1989, it was discovered that Petitioner was not qualified to drive in interstate commerce under 49 CFR 391.15(c)(2)(i) because of a conviction of operating a motor vehicle under the influence of alcohol. Said conviction resulted from Petitioner's plea of guilty on July 28, 1989, to the charge of "DRIVING WHILE UNDER THE INFLUENCE OF AN ALCOHOLIC BEVERAGE". The Regional Director included with his notice copy of all documentary evidence supporting his decision, and gave notice to the Petitioner of his right to petition for review of the disqualification and formal hearing.

Mr. Dreyer's petition for review and hearing is supported by an affidavit, in which he makes allegations concerning the facts surrounding his conviction for the above described charge. Petitioner alleges that at the time he committed the offense he was moving his semi-tractor four blocks from his residence to a truck parking lot, and was not at the time engaged in interstate commerce. He alleges he was not waiting to be dispatched to any other facility or terminal, or inspecting, servicing or conditioning his vehicle.

[1] The institution of a review procedure following the receipt of the Notice of Claim does not indicate that degree of good faith which would warrant total relief from any penalty for these violations.

By Notice dated January 5, 1990, the Regional Director amended his notice of disqualification to state that Petitioner was "not qualified to drive in interstate commerce under 49 CFR 391.15(c)(2)(i) and 49 CFR 383.51(b)(2)(i)". In a letter to Petitioner's attorney dated January 5, 1990, the Regional Director's Counsel encloses copy of the amended notice and alleges that "49 CFR 383.51(b)(2)(i) does not depend upon a showing that a driver was 'on duty' during the commission of the disqualifying offense as does 49 CFR 391.15(c)(2)(i)."

Having reviewed the record and pleadings, I find that there is a substantial issue of fact in dispute in this case. The circumstances surrounding the Petitioner's disqualifying offense are not clear. In view of the above and in fairness to the parties in this case, I have determined that the material factual issue in dispute be submitted to an Administrative Law Judge for additional proceedings. The Judge appointed shall, in addition to the authority cited below, specifically address the matters discussed above and should review the record, oral arguments and briefs prior to making recommendations. Petitioner should be aware that the burden of proof in this proceeding will rest upon him, 49 CFR 386.58(b) and 391.47(e) (1989).

Therefore, it is ordered, That Petitioner's request for a hearing is granted. I hereby appoint an Administrative Law Judge in accordance with 49 CFR 386.54(a) (1989) to be designated by the Chief Administrative Law Judge of the Department of Transportation as the Presiding Judge. The Judge appointed is authorized to perform those duties specified in 49 CFR 386.54(b) (1989).

In Washington, District of Columbia, this 27th day of July, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Alamo Distributing Service, Inc.

[Docket No. R6–89–63]

Order in Response to Motion for Reconsideration

On April 30, 1990, I issued a Final Order in this matter finding the facts to be as alleged and Ordering Respondent to pay an assessed penalty of $11,000. At that time, there was no answer or request from Respondent on the questions of violation or penalty.

On May 25, 1990, I received a letter from Respondent explaining that his business was not such that it could absorb a penalty in this amount. That letter, which I will treat as a Motion for Reconsideration, did not deny the violations but set forth the statement that the company has taken all actions necessary to comply with the regulations.

The violations alleged and proven are not casual violations. Those concerning excess driving hours are serious. Records of duty status and failure to keep adequate driver files are also serious. Nevertheless, although complete forgiveness of the penalty is unwarranted, I am willing to consider the Respondent's current status.

The Regional Director should contact Respondent and schedule an audit within the next thirty (30) days. If the Respondent is in compliance with the regulations, the penalty will be reduced to $5,000. If continuing violations are found, the penalty will remain as assessed in the Order of April 30.

The original Order was partly granted because of an absence of response on the part of the Respondent to the Regional Director's Motion. Likewise, this present Order is granted in part because of an absence of response on the part of the Regional Director to Respondent's letter.

Therefore, it is ordered, That the Order of April 30 is stayed for 30 days from the date of this Order pending a reaudit of Respondent. Should that audit find that Respondent is now in compliance, the penalty assessed shall be reduced to $5,000. Should that audit find continuing violations, the penalty assessed will remain at $11,000.

Dated: July 23, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of R. Brown & Sons, Inc.

[Docket No. R1–90–06 (Formerly R1–90–101)]

Order Appointing an Administrative Law Judge

This matter comes before me upon request for a hearing filed by Respondent. The Petitioner, Regional Director, Office of Motor Carrier Safety, agrees that Respondent has identified material factual issues in dispute.

Petitioner alleged in a Notice of Claim dated May 7, 1990, that Respondent violated several sections of the Federal Motor Carrier Safety Regulations (FMCSRs), 49 CFR 391.51, 395.8 and 396.11.

Respondent contests each of these allegations. Respondent questions whether it was required to maintain a complete driver qualification file, whether it was exempt or whether the failure, if any, to maintain a file was attributable to it. Respondent also denies that it ever required any driver to make a false entry upon a record of duty status and also denies that any necessary repairs to its vehicles were not made. Respondent asserts that it kept such records or certified that no repairs were necessary.

Therefore, it is ordered, That the Respondent's request for a hearing is granted. In accordance with 49 CFR 386.54(a), I hereby appoint an Administrative Law Judge to be designated by the Chief Administrative Law Judge of the Department of Transportation, as the Presiding Judge in this matter. The Judge appointed is authorized to perform those duties specified in 49 CFR 386.54(b).

Dated: July 19, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of David Salinas

[Docket No. R6–90–20]

Final Order

This matter comes before me upon request of the Regional Director, Region 6, Office of Motor Carrier Safety for a Final Order finding the facts to be as alleged in a Notice of Claim dated March 8, 1990, and assessing a penalty of $500 (not $1,500 as requested incorrectly in the motion).

Respondent has not requested a hearing and settlement negotiations were unsuccessful. Having reviewed the Motion and the supporting documents appended thereto, I find that the evidence supports the charges and specifications in the Notice of Claim relating to violations of the Federal Motor Carrier Safety Regulations (FMCSRs).

Therefore, it is ordered, That the Motion for a Final Order is granted and the Respondent is directed to pay $500 the amount of assessed penalty to the Regional Director within 30 days of the date of this Order.

Dated: July 13, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers

In the Matter of Wisconsin Protein Carriers, Inc.

[Docket No. R5–90–07 (Formerly R5–89–140)]

Final, Order, in Part and Order Appointing Administrative Law Judge

This matter comes before me upon request of the Respondent for a hearing. This request originates in a Notice of Claim dated October 31, 1989. The Regional Director, Office of Motor Carrier Safety, Region 5, raises no objection to the hearing and asks for the expedited appointment of an Administrative Law Judge.

The Notice of Claim alleges violations of the Federal Motor Carrier Safety Regulations (FMCSRs) in three areas: (1) 49 CFR 387.7(a), failing to have the requisite level of insurance; (2) § 395.8(e), false entries upon a record of duty status; and (3) § 395.8(k)(1), failing to preserve record of duty status.

Respondent has a long involvement with this Agency and its regulations. There can be no excuse based on inadequate knowledge of the requirements of the regulations. There is ample case law to establish that a commercial entity is deemed to have knowledge of regulatory violations if the means were present to detect the violation, see *Riss & Co.* v. *U.S.* 262 F. 2d 245, 250 (8th Cir., 1958) and *U.S.* v. Time-DC. Inc., 381 F. Supp. 730, 739 (W.D. Va., 1974).

Respondent admits to the transportation as alleged in Count 1, but denies knowingly transporting cargo requiring public liability insurance in the amount required. Such knowledge is fundamental to successful business operations. It is simply not enough to say that such a violation was inadvertent. It is my fervent hope that most violations are inadvertent. To assume that any violation is deliberate is callous and in such instance criminal action, not civil, would be warranted. Therefore, I can find no material factual issue here. Respondent transported materials in violation of the requirement. The forfeiture penalty assessed at $1,000 is reasonable.

With respect to the alleged violations in the second count, the falsification violations, Respondent contends that although there are inconsistent records, it denies that the payroll and toll records are necessarily accurate. This is a novel contention in terms of this violation, however, in the absence of any contest by petitioner, I am appointing an Administrative Law Judge to examine these counts, to hear the evidence and to make a judgment concerning the validity of the alleged violations.

With respect to the alleged violations in the third count, failure to preserve a driver's duty record, I am in a quandry as to the underlying claim. Respondent contends that each of these counts involves an exception under the rules and that although not retained, all required records have been prepared. In addition, Respondent contends these same records have been prepared (and apparently disposed of) in exactly the same manner for over 20 years. In that time and through a number of audits, no previous violations of this regulation have been alleged.

These averments stand uncontested by Petitioner. This is different than factual issues in dispute. Either Respondent is within the exception, or not. Either the records are prepared or they are not. If, in fact this has been the mode of operation, and violations have not been discovered or discussed previously, I am giving the Respondent the benefit of the doubt. No *prima facie* violations are established by the material before me. If Petitioner feels that there are substantive violations here, I suggest that it discuss its concerns with Respondent and document its case for any future audits. These counts are dismissed.

Respondent also raises serious concerns with the process of assessment. Obviously, Petitioner feels that serious violations have been discovered. This is a carrier with a fairly long history of involvement with the Agency. I would welcome th Judge's review of the assessment process in this case and any recommendations which would guide Petitioner in the future in applying the statutory requisites to its penalty assessments in the face of Respondent's contentions.

Therefore, it is ordered, That Respondent's request for a Hearing on the matter of transporting material without the proper insurance is denied and Respondent shall pay to the Regional Director the sum of $1,000 within 30 days. Alleged violation counts 18–34, failing to preserve driver's records are dismissed as discussed above.

I am appointing an Administrative Law Judge to hear testimony and consider evidence for counts 2–17, the alleged violations of requiring or permitting a driver to make false entries upon a record of duty status. I am appointing the Judge in accordance with 49 CFR 386.54(a), to be designated by the Chief Administrative Law Judge of the Department of Transportation, to be the Presiding Judge in this matter. The Judge appointed is authorized to perform those duties. specified in 49 CFR 386.54(b).

Dated: July 10, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Edgar J. Anderson

[Docket No. R6–90–225]

Final Order

This matter comes before me upon request of the Regional Director, Region 6, Office of Motor Carrier Safety for a Final Order finding the facts to be as alleged in a Notice of Claim dated February 6, 1990, and assessing a penalty of $1,500.

Respondent has not requested a hearing and settlement negotiations were unsuccessful. Having reviewed the Motion and the supporting documents appended thereto, I find that the evidence supports the charges and specifications in the Notice of Claim relating to violations of the Federal Motor Carrier Safety Regulations (FMCSRs).

Therefore, it is ordered, That the Motion for a Final Order is granted and the Respondent is directed to pay $1,500 the amount of assessed penalty to the Regional Director within 30 days of the date of this Order.

Dated: July 10, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Kenworth of Tennessee, Inc.

[Docket No. 89–TN–031–SA]

Final Order

This matter comes before me upon request for a Hearing by Respondent and Motion for Final Order by Petitioner. Petitioner (Regional Director, Office of Motor Carrier Safety, Region 4) has alleged 10 violations of the Federal Motor Carrier Safety Regulations (FMCSRs). These alleged violations were discovered during a Compliance Review of Respondent.

The violations involve 49 CFR 391.51(c) and (d) and 395.8(i). Respondent admits to certain of the violations but denies others on the basis of a jurisdictional challenge. Respondent argues that some of its drivers are not primarily drivers, are intermittent drivers only, or are not regularly employed. Accordingly, Respondent contends they are not covered by the applicable regulation allegedly violated.

Respondent also contests Agency jurisdiction under the 100 air-mile radius exemption in § 395.8(l) and the imposition of a maximum penalty of $500 for each count. Petitioner has sought to clarify its authority in these very areas through widely disseminated interpretations. There appear to be no factual issues left in dispute. Jurisdictional challenges are not countenanced in the regulations governing these hearings and there is no reason for me to appoint an Administrative Law Judge. Respondent's recourse is in the Courts.

With respect to the imposition of the penalty, I have stated on many occasions that the Regional Director is in the best position to make the original assessment. Only where the circumstances warrant will I intervene to change such an assessment. Respondent has not made a clear

showing that the number of counts is unjustified; Respondent has not convinced the Regional Director that willing compliance will be implemented in the future; Respondent has not substantiated its allegations that it is being treated differently than similar organizations in this Region.

Therefore, it is ordered, That Respondent's Request for a Hearing is denied and petitioner's Motion for a Final Order is granted. Respondent shall pay the sum of $5,000 to the Regional Director within 30 days of the date of this Order.

Dated: July 5, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Tonawanda Tank Transport Service, Inc.

[Docket No. RI–88–130]

Final Order

This matter comes before me upon request of the Regional Director, Office of Motor Carrier Safety, Region 1, for a Final Order. In its original response to the Notice of Claim, Respondent requested an informal settlement conference and reserved its right to request an administrative hearing. Such a request has not been perfected, and in any case would not be granted as Respondent admits the violations. Respondent has requested mitigation and we will address that point herein. Mitigation alone is not a material factual issue in dispute subject to hearing.

A Notice of Claim issued in September, 1988 following an audit in July, 1988 alleged 18 violations of the Federal Motor Carrier Safety Regulations (requiring or permitting false logs). A penalty assessment of $13,500 was levied. The parties have been unable to resolve this matter informally.

Between June, 1985 and July, 1988 Respondent was the subject of three audits. The audit previous to the one at issue here resulted in a penalty settlement of $9,000 for alleged hours of service and false records of duty status violations.

In its reply to the Notice of Claim, Respondent notes these facts. Respondent then goes on to discuss in detail the many actions taken to stem the tide, including cautioning drivers of the consequences of continuing violations, computerization of log monitoring, hiring of new personnel and maintenance of a strong safety training program. Its brief states: "* * * has simply spent too much time and money in attempting to bring its company into full compliance to risk substantial fines and penalties in the future due to a lack of effort of its employees."

Respondent notes that time was compressed between the settlement for the violations in the 1987 audit and the follow-up audit which resulted in the documentation of these violations. Respondent contends it would have been "more equitable appropriate" to conduct a follow-up audit after the computer system became fully operational.

Petitioner responds to these arguments by applauding any efforts to improve safety, but dismisses the efficacy of Respondent's implemented plans. Petitioner states that it is unsure of the success of such program even if in fact it has been implemented.

The record does' not indicate that the program is now in place, there is no discussion of the success or failure of the program if it is in place, nor is there any indication of the likelihood of a new audit soon.

The violations have been admitted. I would like to state for the record that even had Respondent contested the allegations on the basis of not knowing or requiring the violations, there is ample case law to establish that a corporate entity is deemed to have knowledge of regulatory violations if the means were present to detect the violations, see *Riss & Co.* v. *U.S.*, 262 F.2d 245, 250 (8th Cir., 1958) and *U.S.* v. *Time-DC, Inc.*, 381 F. Supp. 730, 739 (W.D. Va., 1974). I make these observations by way of stating that in the case of Respondent, its present averments should put any such arguments to rest in the future as regards its circumstances.

Judge Kolko, in a recent opinion in the matter of *Drotzmann. Inc.*, Docket No. R10–89–11, indicated that an effective safety program may have an effect on certain types of alleged violations. The effectiveness of such a program is indicated by the presence or absence of continuing violations. Mitigation could accordingly be given where an established program is showing results. I have no such information before me. However, the age of this case and these violations, the upgrading of programs to detect these violations and eliminate them and the Respondent's contention that the passage of so little time between audits worked to its disadvantage, warrant a slight reduction in the assessment.

At the same time, it appears that sufficient time has elapsed for a follow-up audit to ascertain the efficacy of the proferred improvements. The Regional Director should work with the Respondent to select an appropriate time for such an audit. If violations are continuing, then a clear pattern case will have been established. Further action will be predicated on Respondent's good faith implementation and continuation of a program to eliminate these violations.

Therefore, it is ordered, That Petitioner's Motion for A Final Order is granted. However, for the reasons discussed above, the penalty is reduced to $10,000. Respondent shall pay this amount to the Regional Director within 30 days of the date of this Order.

Dated: July 5, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Corey Brothers, Inc.

[Docket No. R3–90–05 (Formerly R3–90–056)]

Order Appointing Administrative Law Judge

This matter comes before me upon request of the Respondent (Corey Brothers, Inc.) for a hearing and opposition thereto and request for a Final Order by Petitioner (Regional Director, Office of Motor Carrier Safety, Region 3). The request for a hearing is occasioned by receipt of a Notice of Claim, dated December 18, 1989, alleging 35 documented violations of the Federal Motor Carrier Safety Regulations (FMCSRs). Petitioner seeks the imposition of a civil penalty in the amount of $18,200.

Respondent replied to the Notice of Claim on January 15, 1990. That reply addressed each claim, denied its allegations and added specific notations, where it deemed appropriate. The reply also noted that a key staff member was apparently incapacitated at the time of the audit, which accounts for some missing documentation. Certain assertions are of little consequence in this proceeding. The fact that most of the transportation provided is at the local level does not affect the jurisdiction of this agency. Respondent does transport in interstate commerce and is subject to the FMCSRs.

Petitioner opposes the request for a hearing and states that Respondent's request contains only general denials. Such is not the case. Statements such as Respondent's answer to Claim 3, to wit, "Corey Brothers, Inc., denies all of the allegations contained in this paragraph and asserts that it maintained the required records in the files * * *", seem to indicate the presence of a fairly specific factual issue in dispute. Petitioner seeks to support its claim by referencing the documentary evidence in appendix B. Without a specific recitation of that evidence, I cannot

agree with the Petitioner. I will note that Respondent contests that allegation that it did not report an accident by stating that no accident occurred. The record before me does seem to provide evidence of a truck, in an accident, with a report, insurance claim and photos as verification. However, being of a relatively open minded disposition, I am willing to allow respondent to explain this discrepancy to an Administrative Law Judge. Respondent also seizes on an apparent typographical error in one count, involving a trip from Charleston, West Virginia, to Bland, WV, and claims no interstate transport was involved. Possibly there is a Bland in both West Virginia and Virginia. Respondent will have to convince the Judge of this.

Counsel for the Petitioner should stand advised that I will not make his argument for him. In the future, if Counsel believes that the documents substantiate an argument, these documents shall be properly referenced and described in the pleading. Counsel for the Respondent should stand advised that this Agency places the highest priority on highway safety. The FMCSRs have been promulgated in furtherance of Congressional objectives to that end. The allegations levied here are serious. Corey Brothers protests its innocence of any violation. Corey Brothers seeks an opportunity to put forth its arguments. I shall grant Corey Brothers that opportunity. However, Respondent should be counseled that I will not countenance frivolous pleadings where highway safety is at stake. The Judge appointed by this Order is hereby requested to examine each of the arguments in this matter and to determine if any pleadings are, in fact, frivolous, and I would welcome any recommendations on further action.

Therefore, it is ordered, That I hereby appoint, in accordance with 49 CFR 386.54(a), an Administrative Law Judge to be designated by the Chief Administrative Law Judge of the Department of Transportation, as the Presiding Judge in this matter. The Judge appointed is authorized to perform those duties specified in 49 CFR 386.54(b).

Dated: June 22, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Drotzmann, Inc.

[Docket No. R10–89–11 (Formerly R10–89–39)]

Final Order

Upon request of the Respondent this matter was assigned to an Administrative Law Judge for hearing. That hearing took place on April 5, 1990. At the close of the evidentiary and argumentation portion of the hearing, the Judge found and concluded that the agency had made out a prima facie case, that it (the agency) had carried its burden of proof with regard to the fact that the violations had occurred, and that the respondent had permitted the violations to occur.

Of particular interest to me was the Judge's discussion on the establishment of a pattern of violations and the interrelationship between a safety program and proof of pattern. The Judge indicated that *an effective safety program* may have an effect on pattern arguments. In this matter, however, although the Judge would not call the Respondent's safety program at the time of the violations a sham, he did state that the program had no teeth in it.

The effectiveness, or lack thereof, was demonstrated by the evidence of continuing violations. The Judge concluded that it was this continuation of violations which establish a pattern.

The Judge then went on to recommend a reduction of the penalty. This recommendation relies on the apparent beginning of effectiveness of the respondent's safety program. The Judge found evidence of actual termination of drivers, whom he characterized as recidivist violators who just won't listen to letters or warnings.

The Judge articulated the reasoning underlying his recommendation as follows:

> I'm doing so in the hope * * * that a future safety audit by the Highway Administration will indicate that the teeth in the enforcement program have finally had some effect upon the pattern of violations, because otherwise, chances are we will be back in another proceeding at some point, and at that point, the respondent will have had its one bite at the apple, because I can't imagine either myself or some future judge reducing the penalty one more time if the program is not working.

The Judge also underscored the establishment of a pattern in noting that when a company has half of its drivers violating the law, this goes beyond the lone ranger theory, and the ability of a company to control a driver. In the Judge's words, "These are not individual driver violations * * this is a company violation".

The Agency has appealed the Judge's reduction of the penalty and means of payment set forth. In its Appeal Memorandum, the Agency contests the Judge' s recommendation for a lower penalty. In so doing, many prior statements of mine are cited. These statements all reference the wide latitude given to the Regional Director in establishing the amount of a civil penalty. I will underscore those statements here; nevertheless, I have also said that the Administrative Law Judge is free to make a recommendation on the amount of the penalty based on the facts presented at the hearing, and I will accept or modify that recommendation. Reference to the *N. L. Industries. Inc.,* v. *FAA* case is not dispositive here. Any final decision on penalties is resident in my office. If I make no modification in a recommended penalty within the 45 day period it becomes my penalty decision. If I do modify the penalty, that remains within my authority. The delegated authority of the Regional Director never supercedes that authority.

At this point, I see no reason to withdraw my offer to the Administrative Law Judges to recommend penalty terms.

Having said this, I partly accept Judge Kolko's recommendation in reducing the amount of the penalty to provide an incentive to compliance. I do not agree with that part of his recommendation stretching out the payments for six months. In view of the sharp reduction in the amount of the penalty, the agency is entitled to receive the amount due as expeditiously as possible.

Therefore, it is ordered, That the decision of Judge Kolko is accepted and affirmed, except as modified above. In addition, in keeping with the spirit of the Judge's ruling, the Regional Director is directed to reaudit Respondent within 6 months. If the pattern of violations continues, then the Agency is directed to prepare an action sufficient to compel compliance. Payment of the assessed civil penalty is to be made to the Regional Director within 30 days of the date of this Order.

Dated: June 20, 1990.

Attachment

(Transcript Pages from Judge Kolko's Hearing).

Richard P. Landis,

Associate Administrator for Motor Carriers.

> There's testimony today that they hired someone who wasn't doing her job, and yet Mr. Kelley nor Mr. Drotzmann was supervising closely enough to figure out that that was the case.
>
> Judge Kolko: Okay. That concludes the evidentiary and argument portion of this, and the case is ripe for decision, which is as follows:
>
> I find and conclude that the government has not only made out a *prima facie* case, it has carried its burden of proof with regard to the fact that the violations occurred—that actually was established before this proceeding started this morning—and that the respondent permitted those driver violations to occur.
>
> How did it permit those to occur? I think we had ample testimony from the government

witnesses, principally Ms. Phillips and Mr. Arnold, with regard to what a better safety program would be, one that actually had teeth in it, and from all of the government's witnesses with regard to the lack of effectiveness of merely jumping up and down and screaming at your drivers or writing them letters, that an effective safety program, even coupled with a training program, has to go past stern looks and words, and that this was a safety program that had no teeth in it.

Whether or not it was a sham, I don't need to find. It may well have been evidence introduced in good faith by the respondent, but nevertheless, by virtue of the fact that after repeated visits from the government—nevertheless, it was a safety program that really had no clout to it, and that clout was—that absence of clout was reflected by the fact that there were continuing violations, continuing violations which, up to the point of this notice of claim, do establish a pattern of violations, as alleged and as I find proven by the government. And those were the matters which the Associate Administrator set this proceeding for hearing to determine and which I so find.

The bottom line, then, comes, what is the sanction to be effected? Ordinarily, given the overwhelming amount of proof which the government has introduced, I would go along with the fine, as suggested in the very persuasive document of Ms. Taylor—I think it's Exhibit P–13; it is Exhibit P–13—in which, for very cogent reasons, she recommended a fine of $15,000, but she also indicated in her examination that that was based upon information which was up to the then most current audit, and not based upon information that—of a more recent nature.

More recently, it appears, and unbeknownst, apparently, to the government, there have been, finally, some actions taken by the respondent which indicate that it is starting to do the very thing that the government witnesses suggest, which is, if you want to run a responsible program, one that makes an impression on the other employees, you start to terminate people who are recidivist violators and just won't listen to your letters and warnings.

And in Exhibit R–1, there are examples of six such terminations, which occurred in December of 1989. Let me ask Mr. Kelley a question, who's still under oath, even though he's not on the witness stand right now. Have any of those drivers been rehired?

Mr. Kelley: By me? No one.

Judge Kolko: By Drotzmann?

Mr. Kelley: No.

Judge Kolko: Very well. So, as I say, ordinarily, up to the date of the notice of claim, a $15,000 fine would be eminently in order, given that a pattern of violation has occurred, and the Highway Administration was quite understandably frustrated in the fact that it was escalating the fines, and nothing was happening.

It now appears that something is finally starting to happen. We don't know all the details yet, because pursuant to its policy of not auditing a respondent while a previous case is ongoing, a safety audit has not been conducted, but we do have indications that six terminations occurred in one month when, during the prior period of time involved in this and the previous notices of claim that established a pattern of violation, there was no termination.

And so for that reason, and that reason alone, I'm going to reduce the amount of the penalty by $1,000 for each of those drivers terminated and establish a penalty of $9,000, since R–1 indicates six terminations. I'm doing so in the hope, Mr. Kelley, that a future safety audit by the Highway Administration will indicate that the teeth in the enforcement program have finally had some effect upon the pattern of violations, because otherwise, chances are we will be back in another proceeding at some point, and at that point, the respondent will have had its one bite at the apple, because I can't imagine either myself or some future judge reducing the penalty one more time if the program is not working.

I am impressed that it may be working based upon the fact that six—which is a very impressive number of terminations, given that there were zero before, and so for that reason, I reduce the penalty.

Just so that you understand, by the way, in response to the argument which you have—the respondent has stoutly maintained, that it really can't control its drivers, when you have half your drivers violating the law, this goes beyond the lone ranger theory of violating the law. These are not individual driver violations, gentlemen; this is a company violation. And as I say, I may be going out on a limb, reducing this penalty, but I am impressed by the fact that the very recommendations which have been made to you off the record and this morning on the record by the Highway Administrations people are finally starting to be implemented, and solely for that reason, because otherwise, I'm very impressed with the Highway Administration's case and very unimpressed with your defense—solely for that reason am I reducing the penalty by $1,000 for each of those terminations.

The result is that each side has a right of appeal, because nobody has won fully, and I might as well read that to you, as I indicated earlier I would.

"The decision of the Administrative Law Judge," which I have just issued, "becomes the final decision of the Associate Administrator 45 days after it is served, unless a petition or motion for review is filed under 49 CFR 386.62. The decision shall be served on all parties and the Associate Administrator." Since it's an oral decision you've just been served, the Associate Administrator will be notified by virtue of the transcript arriving in the docket section.

There are further regulations which deal with the petition for review. I won't read them into the record. I just cited it to you. It's 49 386.62. So if you wish to appeal to the Associate Administrator, you have 45 days to do so, and what you have to do is contained in 386.62.

Is there anything else to occupy us?

Mr. Hanf: Just one point of clarification, Your Honor. When would that penalty be due?

Judge Kolko: That penalty would be due in 30 days, unless the respondent and the government wish to work out a payment schedule, which I have done in other enforcement proceedings for other agencies. It's a payment schedule that's still meant to have some teeth in it, and I would think that six payments of $1,500 would be the most stretching out that I would countenance.

Mr. Hanf: I guess I didn't understand, Your Honor. Are you asking us to work it out, or are you saying that that's an acceptable payment schedule?

Judge Kolko: Well, that's acceptable to me, if you—

Mr. Hanf: It's—

Judge Kolko:—if the respondent wishes to do that. What other agencies do is enter into a promissory note arrangement with the respondent, with the schedule indicated in that note.

Mr. Hanf: Your Honor, our position has to be that you reduce the fine $6,000, as you viewed, appropriately, but that that reduction alone is enough to satisfy Drotzmann, Incorporated and that since—given the fact they have this large line of credit, and they are a large corporation, I mean, relatively speaking—over $3 million a year—that the $9,000 be due in 30 days.

Judge Kolko: Well, I'll tell you why sometimes—I hear what you're saying. I don't necessarily disagree, Mr. Hanf. There are two theories of this. One is which—that writing any large several-digit check hurts and has the required effect upon bringing the mind to bear on the part of the person who's writing that check as to why he's writing it. On the other hand, having to write a check six times, albeit for a smaller amount, has a similar effect. Each time Mr. Leonard sits down and writes that check, he's going to remember why he's writing it, and you could argue it either way as to which has the greater punitive/remedial effect, both, both of which I'm charged to implement. So while I hear what you're saying and don't necessarily disagree, I would like the respondent to be continuously reminded for six more months as to just what has happened, and I think writing that check will do it.

Mr. Hanf: Is it possible to get interest on that money, then, Your Honor?

Judge Kolko: I don't think it works that way. I think, since it all goes to the General Treasury anyway—I don't recall—

Mr. Hanf: Actually, it goes in the Highways Trust Fund.

Judge Kolko: It does go to the Highway Trust Fund? Okay. Well, we certainly could use it.

But, in any event, I'm basically doing this because I want the respondent to—the same as you do, to feel the bite. We just have different avenues of coming at it, and I don't want them to just write a check and walk away from this proceeding.

Anything else to come before us?

Mr. Hanf: Thank you, Your Honor.

Judge Kolko: All right. We're adjourned. Thank you all. You all did a fine job, and, Mr. Leonard, for somebody who's not a lawyer, you might want to consider going to law school; you did pretty good.

Mr. Leonard: Thank you.

(Whereupon, at 2:55 p.m., the hearing in the above entitled matter was closed.)

In the Matter of Schaffner Mfg. & Sales Corp.

Docket No. R1–90–083

Final Order

This matter comes before me upon request of the Regional Director, Office of Motor Carrier Safety, Region 1 for a Final Order finding the violations to be as alleged and imposing a civil penalty in the amount of $9,500. Respondent has answered with a plea for reduction in the amount of the penalty.

There are several salient points presented by this case. Respondent is a small manufacturer of kitchen cabinets who delivers its own products. Trucking is not its primary operation. The trucking part of the business is ancillary to its operations, however, it appears to provide an essential component of its profitability.

In many previous decisions, I have stated that smallness of size is no excuse for violation of the safety regulations. That continues to be my position. At the same time, however, it must be noted that some distinction needs to be made between those in the transportation services area and those in the manufacturing area, with a distribution sideline. The expanded coverage of the law and regulations is bringing new operators within the scope of coverage. The addition of new investigators means that identification of trucking operations is now more proficient and the possibility of multiple visits to those rated less than satisfactory has increased.

How should the programmatic directions laid out in the guidelines reflect these considerations? Firstly, it is absolutely essential that a degree of decorum be instilled in the process. I recognize that small operations are often pressed for time and personnel. Government requirements for recordkeeping are onerous and seemingly unimportant when viewed in the context of a balance sheet or payroll. Nonetheless, there is no reason to subject the Government's auditors to personal or professional abuse. This record reflects some degree of ridicule, which can easily be translated into noncooperation.

Secondly, the Government has an obligation to schedule its reviews of these smaller operations in such a manner as to ease the scheduling burden. Great care must be taken to impart a sense of understanding, both of the role the regulations provide in enhancing safety and the role we play in ensuring compliance with the regulations.

Respondent has been visited several times in the past 15 years. Enough times, in fact, to know the requirements of the regulations and their importance. The record indicates that on one visit, our investigator was told something to the effect of "give me 6 months and I will be in compliance." Well, more than 6 months has passed since that visit and the Respondent is still in disarray.

Respondent asserts that it has a small, reliable driver force and that it seeks no immunity from Government safety regulations. What the Respondent now needs is to incorporate recordkeeping into its business transaction records. All businesses need to maintain records. The addition of safety records for these few drivers cannot be considered unduly burdensome.

The record indicates that the violations did occur. The Regional Director has already reviewed the record and reduced the original assessment. No hearing is warranted on the issue of penalty alone.

Therefore, it is ordered, That Respondent's request for a hearing is denied. Petitioner's request for a Final Order is granted. I am imposing a civil penalty in the amount of $9,500 as requested. However, I am directing the Regional Director to revisit Schaffner Mfg. & Sales Corp. in 30 days. I expect that by this visit, a proper recordkeeping system will be in place. I am also directing that Schaffner be revisited within 1 year from this Order. If the records are in place and properly maintained, this penalty will be dismissed. However, if the records are not in order, then the full amount is due. In addition, should Respondent remain in noncompliance at that 1 year review, the Regional Director shall institute such action as to compel the cessation of violations.

Dated: June 12, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of D & N Bus Service, Inc.

[Docket No. R3–90–107]

Final Order

This matter comes before me upon request of the Respondent for an oral hearing and the Regional Director's (Petitioner) opposition thereto and request for a Final Order. These motions originate in a Notice of Claim dated February 20, 1990, alleging 19 violations of the Federal Motor Carrier Safety Regulations (FMCSRs) and assessing a penalty of $300 for each alleged violation for a total of $5,700.

Respondent, through Counsel, has replied in a somewhat innovative, if not legally correct manner. Respondent contests the jurisdiction of the Federal Highway Administration (FHWA) in this matter on the grounds that it is, by virtue of a contract with the State of Delaware, an "arm of the State of Delaware." Although Respondent may be contractually responsible to the State of Delaware, the Congress has empowered the FHWA to enforce the FMCSRs, which apply to the transportation of material and passengers, as specified by statute, in interstate commerce. An administrative hearing is not the proper forum for the explication of unsound, even though innovative legal theories.

I fail to understand the thrust of Respondent's defense. The transportation of passengers is a sacred duty; should that transportation involve schoolchildren the burden is of even greater weight. It is of no consequence to this Agency whether Respondent complied with its contractual requirements to the State of Delaware.

With respect to the charge that this action has been the result of selective enforcement, discriminatory enforcement or othervise prejudicial enforcement, the record establishes that such charges are pure bunkum. The Affidavit of Mr. Harlan Tull, the State Transportation Supervisor for the Delaware State Board of Education states explicitly that Respondent is not an agency or department of the State of Delaware, nor is it an agent of the Board. Respondent is properly characterized as a contract carrier of passengers.

The Affidavit of Mr. Walter H. Johnson, Jr., establishes that there have been other enforcement actions against carriers transporting school children in interstate commerce pursuant to contracts with State and local governments.

These arguments of Respondent do not constitute material factual issues in dispute. It is not enough to say that the facts of each individual violation will be addressed at hearing. The regulations are clear and specific: to get to the hearing stage, all material factual issues in dispute must be identified. 'Respondent's pleading has not met this basic test.

On the other hand, the record before me substantiates that there was transportation in interstate commerce and that the alleged violations did take place.

Therefore, it is ordered, that Respondent's request for a hearing is denied and Petitioner's request for a Final Order is granted. Respondent is directed to pay the amount of $5,700 to

the Regional Director within 30 days of the date of this Order. In addition, Respondent should note that the Notice of Claim also provides a Notice of Abatement. The Regional Director is hereby directed to ascertain immediately if the Notice of Abatement has been followed. If Respondent has not complied with the Notice of Abatement, further action to compel compliance should be brought immediately.

Dated: June 12, 1990.

Richard P. Landis

Associate Administrator for Motor Carriers.

In the Matter of Johnny D. Secrest Driver Qualification

[Docket No. 89–03D]

Order Appointing Administrative Law Judge

This matter comes before me upon petition filed by Johnny Dean Secrest, petitioner, requesting review of the Determination of Qualification issued by the Acting Director, Office of Motor Carrier Standards, Federal Highway Administration (FHWA). In support of his request, petitioner submits for our consideration additional information and arguments; and expresses his belief that the Federal Motor Carrier Safety Regulations (FMCSRs) should be changed or revised to permit the interstate operation of commercial motor vehicles by low vision and monocular drivers. Such a change in the regulations is not to be considered as part of this proceeding. Rather, petitioner's physical qualifications to operate a commercial motor vehicle is the matter at hand. Petitioner should note that the FHWA will be considering changes to its regulations, including issues relating to low vision and monocular drivers.

Having carefully reviewed the record, I find that there is a material issue in dispute in this case. The issue is whether petitioner use of an Ocutech Lens System will correct his vision to at least 20/40 in each eye, and whether such a lens system constitutes "corrective lenses" within the meaning of 49 CFR 391.41(b)(10) and 392.9a (1989). Although the second part of the issue appears to be more of a legal issue than one of fact, it is invested with factual characteristics.

It must be determined whether the Ocutech Lens System is something different from glasses or contact lenses and thus, not contemplated in the cited regulation, or whether it is merely a sophisticated or technologically advanced set of glasses. This is a matter of factual proof, including the possible review of technical or medical evidence. The record is replete with reference by all parties to different lens systems—Ocutech, bioptic, telescope types—but there is a lack of substantial information on these systems. Even the type of lens to be used by petitioner was in question. The Acting Director determined that bioptic telescopes are not corrective lenses authorized by the FMCSRs. Petitioner argues that his doctor examined his vision using a Ocutech lens system, which, he alleges, is not a bioptic or telescope type lens.

In view of the above and in fairness to the parties in this case, I have determined that the material factual issue in dispute be submitted to an Administrative Law Judge for additional proceedings. The Judge appointed shall, in addition to the authority cited below, specifically address the matters discussed above and should review the record, oral arguments and briefs prior to making recommendations. Petitioner should be aware that the burden of proof in this proceeding will rest upon him, 49 CFR 391.49(e) (1989).

Therefore, it is ordered, that I hereby appoint an Administrative Law Judge in accordance with 49 CFR 386.54(a) (1989) to be designated by the Chief Administrative Law Judge of the Department of Transportation as the Presiding Judge. The Judge appointed is authorized to perform those duties specified in 49 CFR 386.54(b) (1989).

Dated: May 31, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of A. Weinfeld & Sons, Inc.

Order Denying Petition for Reconsideration and Stay

This matter comes before me upon Petition of Respondent for Reconsideration of a Final Order and Motion for Stay of such Order. The Final Order, issued on March 1, 1990, discussed in detail the reasons for not granting a hearing or other relief as requested by Respondent. This matter involves documented allegations of violations of the regulations. The Respondent has had similar violations in the past. Therefore, this is not a case of first impression for this Respondent.

Respondent's present motion for reconsideration breaks no new ground. Once again, Respondent would like to shift the burden for noncompliance onto an allegedly recalcitrant union. This is not a material factual issue in dispute. For whatever reason, Respondent has violated the regulations. Collective bargaining problems, while they may be real problems for an employer, do not override the safety of the public. The Federal Motor Carrier Safety Regulations are intended to protect the safety of the public.

Petitioner opposes the Motion. Its argument is based on the absence of material factual issues in dispute and the fact that the Respondent was informed in 1988 of the need to establish these files. Yet some 18 months later, Respondent still relies on the excuse that it has labor difficulties.

Although these arguments may be considered in mitigation of a proposed penalty, I find that no further mitigation is warranted. Congress has directed this Agency to secure compliance. In the case of reluctant, recalcitrant or unconvinced carriers, the penalty authority has been increased and strengthened.

With respect to the request for a Stay in the Final Order, I find that no compelling legal or factual argument has been advanced by Respondent. There will be no irreparable harm to Respondent through the imposition of this penalty, there appears to be little chance of success on the merits in a legal action against this Agency, should Respondent wish to pursue that course of action, and whatever public interest considerations are involved must lie in favor of public safety. In this case, the Respondent has been in violation for far too long. The public interest will best be served by the timely resolution of this matter. Respondent has not shown that the Agency has departed in any way from established practice.

Therefore, it is ordered, That Respondent's Motion for Reconsideration and Stay is denied. The terms of the Final Order are to be complied with as written.

Dated: May 7, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of D & D Transportation Co., Inc.

[Docket No. RI–89–276]

Final Order

This matter comes before me upon request of the Regional Director, Office of Motor Carrier Safety, Region 1, for a Final Order finding the facts to be as alleged in a Notice of Claim dated November 15, 1989, and assessing a penalty of $4,800.

The Notice of Claim alleges 10 instances of failing to maintain a complete driver qualification file (49 CFR 391.51) and 6 instances of failing to require a driver to prepare a vehicle inspection report (49 CFR 396.11). Each of the documented instances involves

separate drivers. The Notice of Claim follows an Enforcement Report/ Compliance Review and a Safety Compliance Review. Little appears to have been done in the way of corrective action and the carrier is rated unsatisfactory.

Respondent has not requested a hearing and appears only casually to dispute the allegations in contending that the drivers lease their equipment to Respondent on a trip lease basis and that they are regularly employed by other motor carriers. I do not find Respondent's answers to be either responsive or dispositive of this action.

The record supports the allegations and I am granting the Motion for Final Order.

Therefore, it is Ordered, That the Motion for a Final Order is granted and Respondent is directed to cease operating in violation of the regulations immediately and to pay to the Regional Director the sum of $4,800 within 30 days of the date of this Order.

Dated: May 7, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Abbey Metal Corporation

[Docket No. R1-90-04 (Formerly R1-90-032)]

Final Order, in Part, and Order Appointing Administrative Law Judge, in Part

This matter comes before me upon Motion for a Final Order filed by the Regional Director, Office of Motor Carrier Safety, Region 1 (Petitioner), and Request for Hearing filed by Respondent. This matter arises out of allegations in a Notice of Claim, dated February 9, 1990, alleging 12 violations of the Federal Motor Carrier Safety Regulations (FMCSRs).

The alleged violations include three cases of using a driver physically unqualified under the regulations, three violations of failing to maintain driver qualification files, and 6 violations of failing to require drivers to prepare vehicle inspection reports.

Respondent employs one driver and makes only occasional trips out of state. Informal discussions resulted in no conclusion to this matter. Respondent contends that its driver, a long-term employee of the company is due to retire in September, 1990, that he is examined on a regular basis by a doctor and that inspection reports have been found.

Having reviewed the record before me, I find that the facts support Petitioner's request for a Final Order with respect to the usage of an unqualified driver in Interstate commerce. The driver acknowledges that he has not had "a DOT physical" and that he is an insulin controlled diabetic. Three trips are documented.

With respect to 'the allegations of failing to maintain a qualification file for each driver used or employed, there is no argument that such file is not kept. However, as there is only one driver, I find that Petitioner's request for a Final Order on this count is supported by the record, but the penalty is reduced to one count—for a file not kept at the time of the audit.

The allegations of failing to require a driver to prepare a vehicle inspection report appear to be a matter of factual dispute. Respondent contends misunderstanding as to what was meant by vehicle inspection report at the time of the audit. The record now contains copies of drivers' daily vehicle condition reports. Petitioner stands prepared tocontest the authenticity of these documents.

Therefore, it is ordered, That the Motion for a Final Order is granted as follows: with respect to the three alleged violations of using a physically unqualified driver, $300 for each (total $900); with respect to the three alleged violations of failing to maintain driver qualification files, $300 for one violation (total $300). Respondent is directed to establish files for each driver now and in the future and to cease using an unqualified driver in Interstate commerce. Respondent is further directed to pay to the Regional Director the sum of $1,200 as discussed above within 30 days of the date of this Order.

To determine the remaining 6 alleged violations, I hereby appoint, in accordance with 49 CFR 386.54(a), an Administrative Law Judge to be designated by the Chief Administrative Law Judge of the Department of Transportation, as the Presiding Judge in this matter. The Judge appointed is authorized to perform those duties specified in 49 CFR 386.54(b).

Dated: April 30, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Rig Runner Express, Inc.

[Docket No. R6-89-11]

Final Order

This matter comes before me upon request of the Regional Director, Region 6, Office of Motor Carrier Safety for a Final Order finding the facts to be as alleged in a Notice of Claim dated February 13, 1989 [not September 5, 1989, as referenced in Motion for Final Order] and assessing a penalty of $10,500.

Respondent has not requested a hearing and settlement negotiations were unsuccessful. Having reviewed the Motion and the supporting documents appended thereto, I find that the evidence supports the charges and specifications in the Notice of Claim relating to violations of the Federal Motor Carrier Safety Regulations (FMCSRs).

Therefore, it is ordered, That the Motion for a Final Order is granted and the Respondent is directed to pay $10,500 the amount of assessed penalty to the Regional Director within 30 days of the date of this Order.

Dated: April 30, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Alamo Distributing Service, Inc.

[Docket No. R6-89-63]

Final Order

This matter comes before me upon request of the Regional Director, Region 6, Office of Motor Carrier Safety for a Final Order finding the facts to be as alleged in a Notice of Claim dated September 5, 1989, and assessing a penalty of $11,000.

Respondent has not requested a hearing and settlement negotiations were unsuccessful. Having reviewed the Motion and the supporting documents appended thereto, I find that the evidence supports the charges and specifications in the Notice of Claim relating to violations of the Federal Motor Carrier Safety Regulations (FMCSRs).

Therefore, it is ordered, That the Motion for a Final Order is granted and the Respondent is directed to pay $11,000 the amount of assessed penalty to the Regional Director within 30 days of the date of this Order.

Dated: April 30, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Uncle Bo's Equipment Company

[Docket No. R6-89-15]

Final Order

This matter comes before me upon request of the Regional Director, Office of Motor Carrier Safety, Region 6, for a Final Order finding the facts to be as alleged in a Notice of Claim dated April 7, 1989, and assessing a penalty of $4,500.

The Notice of Claim issued on April 7, 1989, alleges violations of the Financial Responsibility Regulations. Three

violations alleging operations without the requisite level of insurance and failure to have an MCS–90 indicating the proper levels of insurance were discovered during a Safety Audit conducted on November 21, 1988. All three trips were entirely within Houston, Texas.

Respondent has not denied the violations and has not requested a hearing. Settlement negotiations were unsuccessful. Respondent indicates that it did not have the required insurance as a result of the economic climate surrounding this business. Insurance of $500,000 rather than the required $750,000 has been maintained.

No evidence of an MCS–90 is in the record. No evidence as to Respondent's current compliance is in the record. The record does substantiate the allegations and Petitioner is entitled to a Final Order. Nevertheless, this does not satisfy the requirements of the regulations.

Therefore, it is ordered, That Petitioner's request for a Final Order is granted. Respondent is directed to pay the sum of $4,500 to the Regional Director within 30 days of the date of this Order, unless it can produce an MCS–90 for the required amount of insurance. If the MCS–90 is produced, this penalty will be reduced to $1,500. In the absence of an MCS–90 under the terms of this Order, Respondent is directed to cease operating in violation of these regulations. The Director will take whatever actions are necessary to ensure compliance herewith.

Dated: April 30, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of James David Caver dba J. D. Caver & Company

[Docket No. R6–89–32]

Final Order

This matter comes before me upon request of the Regional Director, Region 6, Office of Motor Carrier Safety for a Final Order finding the facts to be as alleged in a Notice of Claim dated June 1, 1989, and assessing a penalty of $6,000.

Respondent has not requested a hearing and settlement negotiations were unsuccessful. Having reviewed the Motion and the supporting documents appended thereto, I find that the evidence supports the charges and specifications in the Notice of Claim relating to violations of the Federal Motor Carrier Safety Regulations (FMCSRs).

Therefore, it is ordered, That the Motion for a Final Order is granted and the Respondent is directed to pay $6,000 the amount of assessed penalty to the Regional Director within 30 days of the date of this Order.

Dated: April 30, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Aaron McGruder Trucking, Inc.

[Docket No. R6–89–56]

Final Order

This matter comes before me upon request of the Regional Director, Region 6, Office of Motor Carrier Safety for a Final Order finding the facts to be as alleged in a Notice of Claim dated September 5, 1989, and assessing a penalty of $13,750.

Respondent has not requested a hearing and settlement negotiations were unsuccessful. Having reviewed the Motion and the supporting documents appended thereto, I find that the evidence supports the charges and specifications in the Notice of Claim relating to violations of the Federal Motor Carrier Safety Regulations (FMCSRs).

Therefore, it is ordered, That the Motion for a Final Order is granted and the Respondent is directed to pay $13,750 the amount of assessed penalty to the Regional Director within 30 days of the date of this Order.

Dated: April 30, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Chaparral Van Lines

[Docket No. R6–89–55]

Final Order

This matter comes before me upon request of the Regional Director, Region 6, Office of Motor Carrier Safety for a Final Order finding the facts to be as alleged in a Notice of Claim dated September 5, 1989, and assessing a penalty of $11,000.

Respondent has not requested a hearing and settlement negotiations were unsuccessful. Having reviewed the Motion and the supporting documents appended thereto, I find that the evidence supports the charges and specifications in the Notice of Claim relating to violations of the Federal Motor Carrier Safety Regulations (FMCSRs).

Therefore, it is ordered, That the Motion for a Final Order is granted and the Respondent is directed to pay $11,000 the amount of assessed penalty to the Regional Director within 30 days of the date of this Order.

Dated: April 30, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Plating Products Co., Inc.

[Docket No. R1–90–008]

Final Order

This matter comes before me upon request of the Regional Director, Office of Motor Carrier Safety, Region 1, for a Final Order finding the facts to be as alleged in a Notice of Claim dated January 18, 1990, and assessing a civil penalty of $4,200. Respondent has replied with a letter which for the most part denies the violations.

Once again, we find that we have encountered a problem common to small, private carriers subject to our regulations, but obviously unaware of the importance of keeping proper files and documentation. Petitioner makes the point that the size of the operation is not necessarily relevant to the alleged violations, as set forth in previous decisions. This is true.

Nevertheless, the enforcement actions of this Agency must reflect some relationship to the ultimate goal of the laws and regulations—to wit, safe operations of carriers in interstate commerce. The facts surrounding this matter are striking. Respondent is a small operation, with one driver and two trucks, making limited runs from its home base to Philadelphia. Petitioner acknowledges that for most out of state business common carriers are used. Petitioner does not dispute the fact that throughout the long history of this business there are no known accidents, spills or other life threatening occurrences involving Respondent's trucks or driver.

If we put these alleged violations on a grid and use a simple form-book approach, there can be no denying that violations do exist. If I grant this Order and impose a fine of $4,200, can we be assured that the violations will cease? Can we be assured that the safety of the traveling public will be enhanced?

I would rather that the Agency makes every effort in its power to educate Respondent as to the requirements of the law and regulations and their reason for being. If this means that we sit down with management and carefully articulate the need for records and go so far as to show management how to keep records, then so be it. Only in those instances where management appears not concerned, recalcitrant or refuses to comply with the regulations should we bring an action with a fine of this magnitude, when dealing with these

small one or two truck private operations.

As there are documented violations here, I am granting the motion for a Final Order. However, with respect to the violation of § 391.51 failure to maintain a complete qualification file for each driver, I find that one violation exists and I am assessing the penalty at $100 for this count. For the violation of § 395.8 not requiring the driver to make and submit a record of duty status, again one violation assessed at $300. For the violation of § 396.11 not preparing a vehicle inspection report, one violation assessed at $300. For the violation of § 172.202 one violation at $300. The total assessed amount for these violations is $1,000.

At the same time I am directing the Regional Director to revisit Respondent and to assure himself that Respondent has a complete understanding of our regulations and program and the need therefore. Once having done this, the revelation of future violations through audits should result in an Order of Cessation or injunctive action if necessary.

Therefore, it is ordered, That the alleged violations having been documented as discussed above, I am granting the request for a Final Order and direct the Respondent to pay the assessed civil penalty in the amount of $1,000 to the Regional Director within 30 days of the date of this Order. Respondent, Plating Products Co., Inc., should further be aware of the fact that although I recognize the difficulty of operating in the economic environment surrounding its business, if it continues to operate in interstate commerce then the rules and regulations of this Agency apply. It is far more economical for a business of its size to take the time to know what is required and to adopt practices which will ensure compliance than to receive a civil assessment penalty for each and every violation.

Dated: April 2, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Drotzmann, Inc.

[FHWA Docket No. R10–89–11 (Motor Carrier Safety)]

Order Granting Partial Summary Judgment

By motion dated March 14, 1990, the Regional Director (Claimant) moves for summary judgment pursuant to 49 CFR 386.35 and Rule 56 of the Federal Rules of Civil Procedure. As grounds for that request it states that no genuine issues of material fact exist and that it is entitled to judgment as a matter of law. In the alternative, Claimant requests partial summary judgment.

In support of its motion, the Regional Director states that Respondent's answers to its request for admissions establish that the violations of 49 CFR 395.3(a) (1) and 395.3(b) alleged in the Notice of Claim [1] occurred. Furthermore, it argues, the violations were committed by Drotzmann employees acting in the scope of their employment and in furtherance of the company's business. Therefore, it concludes, Respondent "permitted or required" the violations and summary judgment is appropriate. Claimant also contends that the violations constitute a "pattern" within the meaning of the regulations and seeks summary judgment on that issue. Further, it asserts that summary judgment should be granted on the issue of the amount of the fine proposed. It contends that the penalty proposed is not a material issue in dispute and should not be altered absent a showing of abuse of discretion.

Respondent answered the motion and acknowledges that the violations alleged did occur but denies that it required or permitted them within the meaning of the regulations. It also denies that the company's actions have constituted a "pattern" within the meaning of FHwA rules and contends that the proposed fine is excessive. Claimant filed a response to Respondent's motion, asserting that Respondent's answer did not raise any genuine issues of material fact.[2]

I grant summary judgment for Claimant on the issue of whether Droztmann drivers committed the violation alleged in the Notice of Claim. Respondent has admitted these allegations and I find that they took place. However, viewing (as I must) all the evidence and inferences to be drawn therefrom in the light most favorable to the nonmoving party, see *Adickes* v. *Kress & Co.*, 398 U.S. 144 (1970), I find that genuine issues of material fact exist as to whether Respondent "required" or "permitted" these violations and whether a "pattern" of violations exists. While these issues may be legal in nature and thus *prima facie* amenable to a summary judgment motion, Respondent's answers to Claimant's request for admissions and its answer to the summary judgment motion dispute the facts alleged in support of these charges and set out genuine issues of fact for trial.[3] I therefore deny Claimant's motion for summary judgment on these issues and will hear evidence on the question of whether Respondent "required" or "permitted" the violations and whether a "pattern" of violations exists.

My action moots the request for summary judgment as to the level of penalty, since the penalty amount will flow from the proof to be adduced at the hearing. In this connection, the Regional Director's assertion that upon proof the penalty amount cannot be altered absent a showing of an abuse of discretion is a fundamental misconstruction of our respective roles in proceedings under 49 CFR part 386. Complainant's proposed standard of review suggests that it is an adjudicatory entity. Claimant, however, acts only as the prosecutor in these proceedings. It brings charges but plays no role in deciding their legal effect on Respondents. Determination of the penalty by the prosecutor would deprive Respondents of a fair and impartial hearing. Such a practice would run afoul of elementary tenets of due process.

Moreover, my power to preside over these proceedings derives from the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* which forbids prosecutorial and judicial functions to mix.[4] Additionally, FHwA's own

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[1] The Notice of Claim, dated May 17, 1989, sets out 26 violations of § 395.3(a)(1)—which prohibits "permitting or requiring" a driver to drive more than ten hours without eight consecutive hours off duty or in a sleeper berth—and 5 counts of violating § 395.3(b), which prohibits "permitting or requiring" a driver to be on duty for more than 70 hours in eight consecutive days. It seeks a civil penalty of $10,000 for the alleged violations of § 395.3(a)(1) and $5,000 for those pertaining to § 395.3(b), for a total fine of $15,000.

[2] I need not consider Claimant's response, since Rules of Practice, 49 CFR part 386, do not provide for replies to answers. Claimant has not moved for leave to file its response or sought other appopriate relief from the rules. I have nontheless decided to consider the document, noting that it raises no new substantive issues.

[3] Respondent states, for example, that it requires its drivers daily to report-in their activities, and attempts by various means to bring into line those drivers who fail to follow the rules. These alleged facts are relevant to the level of penalty at the very least, to the separate but related question of whether and to what extent a "pattern" of violations exists, and to the question of whether Respondent "permitted or required" the violations committed by its drivers as found herein. While on the latter issue Complainant as a matter of law may have established a *prima facie* case, Respondent is entitled to present evidence in an effort to meet its burden of going forward to overcome that *prima facie* case.

[4] See *In the Matter of Woodbury Horse Transportation Inc.*, FHwA Docket No. R1–88–1, Order served June 13, 1989, p. 5, in which the presiding judge found, in accordance with Regional Counsel's view in that proceeding, that he held authority under the APA which enabled the entry of summary judgment. Here, as there, my power to rule on a motion for summary judgment derives from my power to preside pursuant to the APA.

precedent—including a ruling made in the instant proceeding—permits me to alter the Regional Director's suggested penalty. The Associate Administrator order appointing an ALJ pointedly noted, in response to Claimant's objections, that the Judge is free to recommend a penalty modification based on his determination of the facts, citing *In the Matter of Emnire Gas*, R187–87 (February 24, 1989). Finally, FHwA's own rules enable me to modify Claimant's penalty recommendation. The rules provide that the administrative law judge has the power "to ensure a fair and impartial hearing" (49 CFR 386.54(b)). I would be remiss in my responsibilities under that section were I to submit to Regional Director's proposed level of penalty without affording Respondent its right, here literal as well as figurative, to be heard.

Burton S Kolko,

Administrative Law Judge.

In the Matter of Service Bus Company, Inc.

[Docket No. RI–89–05 (Formerly RI–88–137)]

Denial of Petition for Review of the Decision of the Administrative Law Judge

This matter comes before me upon Petition of the Respondent for review of the Decision of the Administrative Law Judge entered on October 6, 1989. The Regional Director has opposed this Petition.

Having reviewed the record and the Decision of the Judge, I find that Respondent has advanced no valid reason, either in fact or in law to change, alter or amend the Decision in any form. The record and the Decision provide adequate basis on which to sustain the original assessment.

Therefore, it is ordered, that the Decision of the Administrative Law Judge is adopted as written and Respondent is directed to comply with the terms thereof immediately.

Dated: March 26, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Bower Tiling Service, Inc.

[Docket No. R5–90–03 (Formerly R5–89–106)]

Order Appointing Administrative Law Judge

This matter comes before me upon request for a hearing filed by Respondent in response to a Notice of Claim, originally dated September 28, 1989, as amended by Notice of Claim dated December 1, 1989. The amended Notice alleges one violation of 49 CFR 396.7(a) and assesses a civil penalty of $8,000.

Respondent has denied the violation and asserts that some person or persons unknown loosened certain brake assemblies to facilitate removal of the vehicle in question. Respondent also asserts that said brake assemblies were operable and properly adjusted.

There is an obvious material factual in dispute here, acknowledged by Petitioner.

Therefore, it is ordered, that in accordance with 49 CFR 386.54(a), I hereby appoint an Administrative Law Judge to be designated by the Chief Administrative Law Judge of the Department of Transportation, as the Presiding Judge in this matter. The Judge appointed is authorized to perform those duties specified in 49 CFR 386.54(b).

Dated: March 22, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Charles M. Cephas, Inc.

[Docket No. R3–88–099]

Final Order

This matter comes before me upon request of the Regional Director, Office of Motor Carrier Safety, Region 3, for a Final Order finding the facts to be as alleged in a Notice of Claim dated December 20, 1988, and assessing a civil penalty of $5,400.

Respondent has not requested a hearing. Petitioner's Motion indicates that there were compromise discussions which took place over a considerable period of time. No compromise having been reached, Petitioner seeks this Order. All references to the compromise discussions have been deleted from the record and Petitioner seeks to have any consideration thereof excluded. Although petitioner is free to delete such discussions from the record, the record submitted should be complete in its documentation of the allegations and the reasoning underlying its penalty reguest. In this matter, the amount requested in the Motion differs from that stated in the Notice of Claim. Am I to divine that notwithstanding the deletion of discussions between the parties and in view of the request that such discussions be given no weight that the new sum in the Motion is the result of a mistake on Petitioner's part? Or perhaps a newfound sense of justice or overweaning development of mercy has taken hold in the administrative process. Petitioner cannot have it both ways. The record is to be supplemented with the reasoning underlying both its allegations and its recommended resolution, or I shall try to develop an understanding of the matter based on what is before me.

Respondent is obviously a marginal operation. This enforcement action arises out of a safety review. The facts and happenstances surrounding these alleged violations are thoroughly documented. Respondent employs three drivers, himself included, however, the last name of one of these drivers appears to be unknown. Produce is hauled in the mid-Atlantic Region. The records, at least as included herein, appear to be at a fairly unsophisticated level.

Having said this, Respondent clearly made a number of interstate trips without the required levels of insurance. Whether these trips were limited to the 6 documented or more is neither discussed nor is its relevance ascertained. Respondent did secure the requisite insurance subsequent to this action. I have no idea if Respondent continues to operate with insurance or is even solvent.

The premium for insurance for this Respondent is in excess of $17,000. The Petitioner has requested a penalty of an additional $5,400, which is coincidentally about the amount of one insurance payment. The record does not indicate if Respondent has had any accidents. The record does not indicate if Respondent is flagrantly abusive. On the contrary, it appears that Respondent is trying to accommodate the requirements of the regulations and at the same time keep its head above the swirling financial waters engulfing its operations.

I cannot ascertain the impact imposition of this penalty will have on Respondent's business or his attitude towards compliance. These violations have occurred. They should not occur in the future. It should be noted that the letter sent to Respondent relating to the Financial Responsibility regulations states, in part, "If the minimum level of financial responsibility has not been obtained for your fleet, you are directed to cease your trucking operation."

As I am unable to fathom the efficacy the requested penalty will have with regard to this Respondent, I am going to reduce it. Some penalty appears warranted, therefore, I am dismissing the $400 claim for not having the form in the file and assessing half the request of the Petitioner in the Notice of Claim. If Respondent is found to be operating in the future without the required insurance then an injunction against his operations appears to be the proper remedy.

Therefore, it is ordered, that the Motion for a Final Order is granted.

modified above. Respondent shall pay to the Regional Director the sum of $3,000 within 30 days of the date of this Order.

Dated: March 15, 1990.

Richard P. Landis

Associate Administrator for Motor Carriers.

In the Matter of Warehouse Exports, trading as Continental Imports, Inc.

[Docket No. R3-89-031]

Final Order

This matter comes before me upon Motion for a Final Order filed by the Regional Director, Office of Motor Carrier Safety, Region 3, finding the facts to be as alleged in a Notice of Claim dated March 31, 1989, and assessing a penalty of $6,300.

The Notice of Claim alleged 21 violations of the Federal Motor Carrier Safety Regulations (FMCSRs), all involving failure to maintain a driver's qualification file. Respondent sought to resolve this matter through a negotiated settlement, however, it appears no resolution was possible. The record does not indicate any perfected request for a hearing.

The record indicates three significant sets of facts to me. First, the Respondent is a relatively small operation, employing 3 drivers and operating within the 100 mile radius provision of the regulations. The alleged violations involve the records for two drivers, with the number of allegations being a composite of trips documented and made by these drivers. Second, Respondent may have been recalcitrant at the time of the initial review. Third, it appears that with certain personnel changes and a new attitude, Respondent now realizes the importance of keeping the required files.

In several earlier cases, particularly, *Continental Petroleum & Energy Co.*, R3-09-066, *Continental Tank Lines, Ltd.*, R3-89-059, and *Corco Chemical Corporation*, R3-88-106, I addressed the documentation of multiple violations in record and files cases. Because of the small, localized nature of the operations and the apparent willingness of management to institute the necessary controls to ensure compliance, I find that violations have occurred. However, as the files were incomplete at the time of the audit, I find that there is one violation in the case of each driver. Each of these violations is substantiated by the record and will be assessed at $500.

Therefore, It Is Ordered, That Petitioner's Motion for a Final Order is hereby granted, except as modified above. Respondent shall pay the sum of $1,000 to the Regional Director within 30 days of the date of this Order and shall take all appropriate steps to ensure that the files are placed and maintained in order.

Dated: March 9, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Arthur Shelley, Inc.

[Docket No. R3-89-034]

Final Order

This matter comes before me upon request of the Respondent for a hearing and a Motion in Opposition Thereto and for a Final Order submitted by Petitioner. Petitioner, the Regional Director, Office of Motor Carrier Safety, Region 3, opposes the request of Respondent on the grounds that no specific factual issues have ever been identified.

This case has a rather detailed history. The Respondent was sent a Notice of Claim on March 20, 1989, alleging 9 "serious pattern of safety violations" for violations of the regulations governing the duty time of drivers. Specifically, Respondent was alleged to have required or permitted drivers to drive after having been on duty more than 70 hours. The civil forfeiture claim was assessed at $900 per violation.

Respondent replied to the Notice by denying the alleged violations, at first specifically denying knowledge of the violations (leased drivers), then averring that if knowledge were to be imputed to Respondent that it wished to contest the amount of the claim. I have discussed the knowledge issue in several recent cases, see, *Trinity Transportation, R9-90-001*, and *Horizon Transportation R3-89-114*. In summary, I will only state here that knowledge, in the circumstances presented in this civil forfeiture claim, is imputed. The case law is clear on this point and is referenced in those Orders.

Respondent also met with Petitioner to discuss settlement of this claim. No settlement was made. Respondent offered up the institution of a monitoring system and disciplinary action to prevent the recurrence of such violations in the future. This was done by way of mitigation. Respondent also contends that it has had no similar penalty actions against it and that it was operating with a satisfactory rating.

There are a number of concerns which I would like to address here. It appears that Respondent acknowledged that violations have occurred. I have expressed a sense of unease with respect to pattern violations in previous cases. In those in which Respondent has provided information of an existing monitoring and disciplinary system, I have called the matter for hearing. In those in which the Respondent made no vigorous protestation, could show no system in place or merely contested the amount of the penalty, I have issued Final Orders.

This case presents a middle ground. The record indicates that the violations documented in the Notice were a mere sampling of violations discovered. Normally, to sustain a pattern violation, I would like to see a significant number of violations documented. However, here it appears that Respondent has come to a recognition of possible deficiencies and is now instituting a system to address these deficiencies. This is a situation which appears to meet the standards established by the Congress for just such "middle violations." The penalty provided was designed to positively reinforce compliance.

Petitioner has taken into account Respondent's actions. Petitioner further has revealed that Respondent, contrary to its assertions has been the subject of previous enforcement action and did not have a satisfactory rating. Nevertheless, in an effort to encourage compliance, a substantial reduction of the civil assessment reducing the claim from $8,100 to $5,300 was offered. This reduction is not considered sufficient by Respondent.

In discussing the issue of penalty assessments in previous cases, I have repeatedly stated that the local judgment of the Regional Director is the standard guiding these matters. The amount of the penalty is not a material issue in dispute and therefore not entitled to hearing status. I will modify the assessment where warranted, but not as a matter of routine. In this case, the reduced penalty requested by Petitioner in his motion appears fair and supportable on the record. Respondent's intransigence is not sustained by the record. Violations have occurred; it appears that Respondent's previous position was, if not acceptance thereof, then a fatalism about their occurrence or reoccurrence. Respondent's new attitude, in instituting a monitoring system and disciplinary action is a positive step in the right direction. The Congressional remedy in this instance appears to be right on the mark.

The record disposes of the matter of material factual issues in dispute. As discussed above, I find that the record supports the allegation that violations have occurred.

Therefore, it is ordered, That Respondent's Request for a Hearing is denied. Respondent's request for a

reduction in the amount of the penalty is likewise denied. Petitioner's request for a Final Order is granted. Respondent shall pay to the Regional Director the sum of $5,300 within 30 days of the date of this Order.

Dated: March 5, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Chemical Commodities, Inc.

[Docket No. R7-90-02 (Formerly R7-89-053)]

Order Appointing Administrative Law Judge

This matter comes before me upon request for a hearing filed by Respondent and Opposition Thereto and Request for a Final Order filed by Petitioner. Petitioner, the Regional Director, Office of Motor Carrier Safety, Region 7, alleged, in a Notice of Claim dated June 14, 1989, violations of the Hazardous Materials regulations and assessed a civil penalty of $5,000. Respondent replied to the Notice on June 26, 1989, requested a hearing and stated that Respondent did not believe that the allegations are accurate or applicable and denied any violations of the regulations.

I have withheld ruling on Motions at the request of Petitioner on the basis that settlement was possible. Such has not been the case.

Petitioner argues that Respondent's request for a hearing should be denied for failure to admit or deny the alleged violations, for failure to list material factual issues in dispute, and for failure to provide a Certificate of Service as required by the regulations.

Respondent's letter clearly and specifically denies any violation of the law. The contention that the allegations are not accurate or applicable appears to constitute a rejoinder to Petitioner's allegations. In sum, Respondent is putting Petitioner to the proof. The record before me is insufficient to dispose of this matter. As there is a clear issue of fact in this case, I am appointing an Administrative Law Judge to hear the matter.

Therefore it is ordered, That Petitioner's Motion for a Final Order is denied and Respondent's Request for a Hearing is granted. In accordance with 49 CFR 306.54(a), I hereby appoint an Administrative Law Judge to be designated by the Chief Administrative Law Judge of the Department of Transportation, as the Presiding Judge in this matter. The Judge appointed is authorized to perform those duties specified in 49 CFR 386.54(b).

Dated: March 2, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of A. Weinfeld & Sons, Inc.

[Docket No. R3-90-032]

Final Order

This matter comes before me upon request of the Respondent for a hearing, Motion for Final Order and in Opposition to the Request for Hearing filed by Petitioner and Answer thereto filed by Respondent. Petitioner, the Director, Office of Motor Carrier Safety, Region 3, initiated a Notice of Claim, dated November 20, 1989, alleging 24 violations of the Federal Motor Carrier Safety Regulations (FMCSRs) and assessing a penalty of $58,400.

The parties have apparently met to discuss settlement of this case but have been unable to reach agreement.

Petitioner's Motion cites in its support the failure of Respondent to articulate any specific factual issues in dispute failure to present in writing mitigating evidence, and the fact that Respondent was the subject of a prior Safety Review during which similar violations were pointed out.

Respondent's answer avers everything but factual matters in dispute. Respondent contends it has not received documentation or information pertaining to the audit; that it is not legally responsible for the alleged violations; that there are extenuating and mitigating circumstances which would preclude liability; that it is not legally required to present its case at this time; and that the investigator's biased view of the facts is heresay.

The regulations governing the grant of a hearing are clear and straightforward. 49 CFR 386.14(b)(2) states in pertinent part "* * * A request for a hearing must contain a listing of all material factual issues believed to be in dispute * * *." I fail to understand the mystery in Respondent's inability to comply therewith. An administrative hearing under these regulations is a factual hearing. If there are no factual differences, then there can be no hearing. If Respondent has a problem with the legality of the regulation, then its remedy will lie in a legal action following the conclusion of the administrative action. See: *In the Matter of Alan Party Rental, Inc.* Docket No. 89-186.

Respondent has been visited in the past, and received the benefit of a Safety Review. It was given an unsatisfactory rating based on the discovery of similar violations. Respondent is familiar with the requirements of the regulations. The alleged violations all involve failure to have required records in the files. This does not appear a difficult matter in which to identify factual differences. Either the records are in the file, or they are not. If they are not, then they are not because of an act of God, man or mystery of nature. The Notice of Claim specifies the missing records, Respondent cannot rely on the lack of "documentation" as a reason for its inability to articulate factual differences.

There are, therefore, no facts before me upon which determine a difference. The regulations clearly require factual differences for the appointment of an Administrative Law Judge. Respondent has not met this basic test. On the other hand, the record before me clearly establishes that Respondent is subject to the regulations, has knowledge of this and has been audited previously, that similar violations were documented, and that there are no mitigating circumstances before me upon which to reduce the amount of the assessment. The violations stand without controverting opposition.

Therefore, it is ordered, That Respondent's request for a Hearing is denied and Petitioner's Motion for A Final Order is granted and a penalty in the amount of $58,400 is assessed. The penalty shall be paid to the Regional Director within 30 days of the date of this Order.

Dated: March 1, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Arizona Freight Systems, Inc.

[Docket No. R9-89-052]

Final Order

This matter comes before me upon request of the Regional Director, Office of Motor Carrier Safety, Region 9, for a Final Order finding the facts to be as alleged in a Notice of Claim dated August 24, 1989, and assessing a civil penalty of $6,750. The Notice of Claim alleged nine documented counts of transporting a shipment of hazardous materials not accompanied by a properly prepared shipping paper (49 CFR 177.817(a)).

The Respondent has not requested a hearing and has not denied the violations. Rather, Respondent takes the approach that the violations were the result of incorrect preparation by others, that it has taken action to bring about compliance in the future, that its past actions indicate a posture of

cooperative, voluntary compliance and that the fine is excessive and punitive.

The actions detailed by Respondent have not been disputed. Following a prior visit by the Agency, Respondent hired a motor carrier safety compliance expert, employed a safety supervisor and embarked upon a program to obtain safety compliance. Although Respondent is commended for these actions, it cannot help but raise the question in my mind why this level of noncompliance in the present matter?

Respondent has had ample notice of its responsibilities under the regulations. The violations have been documented, and notwithstanding the actions of the Respondent to prevent their reoccurrence, petitioner has substantiated its case.

Turning to the amount of the penalty, the reasons therefore and the Agency's posture on these matters, I would like to cite a recent study printed by the Senate Committee on Commerce, Science, and Transportation, entitled *Motor Carrier Safety and the Federal Highway Administration's Education and Enforcement Efforts: Options Intended to Improve an Overloaded Program*, S. Print 101–30 (April, 1989). This report noted that the motor carrier safety program is a multi-faceted, essential education and enforcement effort. Education is noted as being useful when motor carriers take significant actions to comply with the regulations. However, the report notes that operational improvement often follows only after the institution of an enforcement action.

In its discussion of enforcement, the report notes that the agency considers the penalty action to be one of several methods to improve compliance. There is a necessarily subjective and judgmental element to penalty actions. Many factors are involved.

In addressing hazardous materials, the report is critical of the Agency for not devoting the level of attention to such transport as is necessary.

Keeping in mind the above thoughts, the report correctly states the Agency philosophy as follows: "FHMA maintains that the purpose of a civil penalty imposed on a motor carrier is not to cripple its operations or financial stability. By getting the attention of management, the penalty is supposed to promote future compliance." The report also discusses the effects of penalties and states: "Too low a penalty sends the unwanted message to industry that noncompliance with the * * * regulations is tolerated by FHMA. Furthermore, low or insignificant penalty actions tend to have adverse impact on the morale of FHWA safety investigators. For some carriers, FHMA's penalties might be considered part of the expected costs of doing business." This is prelude to admonishing the Agency over the need to assess penalties of a sufficiently meaningful magnitude to encourage voluntary compliance.

Whether the policy of an enforcement audit without penalty action, the so-called 'freebie", is effective or not, there is no guarantee that a carrier can expect to receive a visit without penalty for each and every alleged violation. The Agency attempts to notify the carrier community of the applicability of the regulations, then visits to check compliance and advises of shortcomings. The institution of penalty proceedings depends on many factors.

In this matter before me, there can be no argument that the Respondent has received the benefit of an Agency audit. The Respondent avers it has taken positive compliance actions. Yet, there can be no arguing that these actions have left gaps. Hazardous materials transport has been approached somewhat casually, particularly in view of the presence on the payroll of a safety supervisor.

I have addressed the issue of penalty assessment in many previous matters. My view is that penalty assessment is best left to the recommendation of the Regional Director, as this person is closer to the audit, the carrier and the considerations of the investigating officer. Nevertheless, I have also indicated that this does not constrain my ability to modify the penalty requested if the facts and circumstances presented warrant such action.

Respondent is obviously trying to reach compliance. Respondent is also obviously in violation of the regulations. It is my belief that Respondent has gotten a clear message from these proceedings of the importance of compliance. In Petitioner's Motion, these factors are noted. Petitioner notes that of the nine violations, three contain improper hazard class designations, which are viewed as particularly serious. Petitioner states: "In the event of a hazardous material accident, the response team effort to contain a hazardous material spill is often dependent upon the correct designation of hazard class." The remaining six violations involve improper shipping names and sequence. The record appears to indicate that many of these violations were discovered-only these few were documented.

The violations considered significant have been properly assessed. The others appear not to warrant the imposition of a penalty based upon Respondent's actions to come into and remain in compliance.

Therefore, it is ordered, That the Motion for a Final Order is hereby granted finding the Respondent to be in violation of the regulations as alleged and assessing a penalty of $3,000 for the three violations of improper hazard class designations. All other penalty assessments are dismissed. Respondent shall pay the sum of $3,000 to the Regional Director within 30 days of the date of this Order.

Dated: February 20, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of J.L. McCoy, Inc.

[Docket No. R3–88–029]

Final Order

This matter comes before me upon request of the Regional Director, Region 3, for a Final Order finding the facts to be alleged in a Notice of Claim dated March 17, 1988.

Having reviewed the Motion and supporting documents appended thereto, I find that no valid request for a hearing has been made. I find that the evidence supports the charges and specifications in the Notice of Claim relating to violations of the Federal Motor Carrier Safety Regulations (FMCSRs).

Therefore, it is ordered, That Respondent is directed to satisfy the penalty assessment by paying to the Regional Director the full amount of $58,000 within 30 days of the date of this Order.

Dated: February 20, 1990.

Richard P. Landis

Associate Administrator for Motor Carriers.

In the Matter of Wilmington Tank Lines, Inc.

[Docket No. R3–89–196]

Final Order

This matter comes before me upon request of the Regional Director, Office of Motor Carrier Safety, Region 3, for a Final Order finding the facts to be as alleged in a Notice of Claim dated September 18, 1989, and imposing a penalty of $6,500. The Notice of Claim alleged five violations of the Hazardous Materials Regulations.

The Respondent requested a settlement conference. No hearing was requested. The record indicates that no settlement has been reached in this matter. I find that the evidence supports the charges and specifications in the Notice of Claim.

Therefore, it is ordered, That Respondent is directed to satisfy the

penalty assessment by paying to the Regional Director the full amount of $6,500 within 30 days of the date of this Order.

Dated: February 20, 1990.

Richard P. Landis

Associate Administrator for Motor Carriers.

In the Matter of Carter's Bus Service, Inc.

[Docket No. R3-89-156]

Final Order

This matter comes before me upon request of the Regional Director, Region 3, for a Final Order finding the facts to be as alleged in a Notice of Claim dated August 4, 1989.

Having reviewed the Motion and supporting documents appended thereto, I find that no valid request for a hearing has been made. I find that the evidence supports the charges and specifications in the Notice of Claim relating to violations of the Federal Motor Carrier Safety Regulations (FMCSRs).

Therefore, it is ordered, That Respondent is directed to satisfy the penalty assessment by paying to the Regional Director the full amount of $6,400 within 30 days of the date of this Order.

Dated: February 20, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Trinity Transportation, Inc.

[Docket No. R9-90-001 (FORMERLY R9-89-061)]

Order Appointing an Administrative Law Judge

This matter comes before me upon request of the Regional Director, Office of Motor Carrier Safety, Region 9, for a Motion for A Partial Final Order, which in part states opposition to a request for a Hearing made by Respondent and in part agrees that a Hearing appears necessary on some issues. Respondent has countered with a Motion in Opposition to this request and a Motion for Dismissal or in the alternative for Hearing as originally requested.

These proceedings are occasioned by a Notice of Claim letter dated August 14, 1989, alleging that Respondent has violated the Federal Motor Carrier Safety Regulations (FMCSRs). The original allegations of violation included a 7-count pattern violation assessed at $750 for each count, a 6-count pattern violation assessed at $800 for each count and 14 alleged recordkeeping violations assessed at $400 for each count. A total assessment of $15,650 was levied in that letter. Subsequent thereto, as a result of information apparently uncovered in the pleadings, 2 counts have been dismissed and Petitioner agrees to the necessity for a hearing on 3 others, thus modifying the present assessment to $12,500. I have tried to add and subtract these assessments three different ways and cannot arrive at the sum of $12,500. The closest I come is $12,550.

I state this by way of pointing out that I find the original Notice of Claim to be abstruse at best and difficult for a layperson to understand at least. Perhaps the intransigence of the parties in this matter is explained by the difficulty in deciphering the intent of the Notice. In the future, Petitioner should set forth clearly, in tabular form, if necessary, for multiple count violation allegations, the violation and assessment next to each other.

I also fail to understand how it is that the parties could have communicated with each other over the telephone and in correspondence, yet Petitioner waited until the pleading stage to dismiss counts alleged in error. The informal negotiation process is designed to function in such a matter as to clarify and crystallize the issues. Obviously, in this matter the parties talked but did not communicate.

The substantive issues presented here are significant. Allegations of patterns of violation are relatively new and no body of decision or hearing law is available for review. There is, on the other hand, a long history of recordkeeping violation allegation materials available. There are some significant basic facts which I would like to discuss here.

Respondent states, apparently without contradiction, that it was incorporated in late 1987 and began operations in January, 1988. A Safety Review was conducted within 6 months of commencement of operations. Several recommendations were made at the time, and apparently were followed. A Compliance Review was conducted one year later. This is approximately 18 months after commencement of operations.

Each side quotes from the statute or Congressional Report concerning the nature of the violations and the need to account for a totality of circumstances in determining whether an enforcement matter is present. Each side is partially correct in its arguments. Respondent raises some interesting points to consider, i.e., the alacrity with which it was rated and the surveyed for compliance, the necessity to consider a number of factors in making an assessment and the necessity to consider the attitude of the Respondent.

Petitioner correctly points out that Congress has directed stronger enforcement efforts, that patterns of violation cannot be tolerated as simply a way of doing business and that knowledge of the regulations and the behavior of one's employees is imputed to an employer.

Having established these points the trail of this case leads us into the thickets of both legal and factual argument. Respondent contends that it has in place a vigorous system of discovering and taking action against violators. Therefore, Respondent contends it should not be faulted with a violation of the regulations. Petitioner contends that there was no or an inadequate system of review and that violations occurring over as long as a three month stretch before the imposition of disciplinary action constitute clear violations of the regulations, in fact, so clear as to constitute an identifiable pattern.

Respondent argues that its system militates against a finding of "knowing or requiring" violations. Petitioner resorts to the reasoning expressed in *Riss & Co.* v. *U.S.*, 262 F 2d 245,250 (8th Cir., 1958) and *U.S.* v. *Time-DC, Inc.*, 381 F. Supp. 730, 739 (W.D.Va., 1974). Under the holding of these cases, long adhered to by the FHWA a corporate entity is deemed to have had knowledge of regulatory violations if the means were present by which the company could have detected the infractions. Were this a case involving a respondent with a history of regulatory contacts with the Agency or at least an established operating history, I would have no trouble agreeing with Petitioner. The Respondent contends that it has had a monitoring system in place and that it takes disciplinary action. The documentation of violations in such a situation would be sufficient to find a violation of the "knowing or permitting" standard.

Such is not the case here. This Respondent has offered mitigating reasons. It appears that Respondent has had in place some type of monitoring system as drivers have been terminated. The record indicates the Safety Director has taken an active stance in such matters. Petitioner contends that the system was not functioning or has broken down. Time periods as long as three months with records violations have been discovered before the institution of disciplinary action. These are all factual matters.

Under other circumstances I might consider granting a split motion, sending the pattern violations to hearing and issuing an Order for the recordkeeping violations. However, due to the relative newness of Respondent's operations, the

speed with which the Agency has completed both a Safety Review and a Compliance Review, the Respondent's apparent attempts to comply with the regulations and the guidance given at the Rating review and the Agency's stated position that its goal is compliance and that punitive actions will usually only be taken where the record indicates that such encouragement is needed, I am appointing an Administrative Law Judge to hear the arguments in this matter, to sort out the facts and to make recommendations to me.

I am particularly interested in the pattern violations. Has the Petitioner established that a pattern in fact exists? What constitutes a pattern? Are two documented violations of the same section sufficient? Is it necessary to show a history of enforcement actions? Can Respondent show mitigation through vigorous action such as terminating violating drivers? Is mitigation sufficient to rebut the violation or should it be applied only to the amount of the penalty? Similar questions must be answered for the recordkeeping violations where the Respondent can show a program in operation.

Therefore, it is ordered, That Petitioner's Motion is denied in part wherein requesting a Final Order and granted in part for a hearing. Respondent's Motion is similarly denied in requesting dismissal of this action and granted in part for a hearing. In accordance with 49 CFR 386.54(a), I hereby appoint an Administrative Law Judge to be designated by the Chief Administrative Law Judge of the Department of Transportation, as the Presiding Judge in this matter. The Judge appointed is authorized to perform those duties specific in 49 CFR 386.54(b).

Dated: February 20, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Horizon Transportation, Inc.

[Docket No. R3-89-114]

Final Order

This matter comes before me upon request of Horizon Transportation, Inc. (Respondent) for a hearing and Motion in Opposition thereto and for Final Order filed by the Regional Director, Office of Motor Carrier Safety, Region 3 (Petitioner). Respondent seeks a hearing on the alleged violations of the Federal Motor Carrier Safety Regulations (FMCSRs) and the penalty assessed therefore in a Notice of Claim dated August 4, 1989.

The Notice documented 24 alleged violations of 49 CFR 395.8(e) for requiring or permitting drivers to make false entries upon driver records. The record before me indicates that this is not the first instance in which Respondent has been audited, nor is it the first time such violations have been called to its attention.

In a letter of January 26, 1990, Respondent sets forth the basis of its request for a hearing on the grounds that it did not require or permit such violations, as construed in light of the Webster's Dictionary definition of those terms. Respondent also calls attention to the fact that it, along with other old line carriers is struggling to survive the effects of deregulation. Respondent points out the difficulty of paying high fines and assessments and of keeping qualified help in such an environment. Similar sentiments are expressed in an earlier letter dated August 18, 1989.

I am not unmindful of the burdens raised in Respondent's letters. At the same time, I must point out that the burdens imposed upon the industry in the interests of operating safely will not decrease. I would also like to point out that under no circumstances must economics be allowed to overrule safety needs and requirements. I have pointed out over and over in my Orders the stringency of Congressional mandates, the need to know and keep abreast of regulatory developments, and the requirement to be aware of the legal operating framework of the industry. Anyone who reads the newspapers, trade journals or general media should be aware that operations in a modern, technological society such as ours are demanding and maybe even burdensome. The rewards for those who operate successfully are high. The risks, which are shared by the public at large, can be devastating. It is hard to explain to someone who has just lost a loved one in an accident that it is difficult to operate in compliance with safety regulations in a deregulated environment.

All this is preface to consideration of the request before me. I have granted the request for a hearing in several previous instances on the question of whether the knowing or permitting requirement had been violated. In these cases, i.e., *Woodbury Horse Transportation, Inc.*, R1-88-01; *Drotzmann, Inc.*, R10-89-11; and, *Transformer Services, Inc.*, 88-34, Respondent had made a vigorous representation as to why it should not be found to be in violation. The presence of disciplinary programs, actions and even terminations as well as review procedures and the like were all presented and provided a basis on which to find material factual issues in dispute. We do not as of this writing have any guidance from an Administrative Law Judge on this subject.

In the present case, no such information is forthcoming. Reliance on a Dictionary definition is misplaced. This is a legal proceeding. The regulations have been promulgated in a regulatory, therefore legalistic setting. Lay arguments may provide some insight in the absence of legal reasoning, but such is not the case here.

Within the context of these regulations, employers are liable for the actions of employees. This is standard concept from the basic law of agency. The mental state or intent element is not part of the burden faced by an auditing agency in enforcing civil penalty statutes. There is a considerable body of case law along this line, see *United States* v. *Sawyer Transportation,* 337 F. Supp. 29 (D. Minn. 1971), *Riss Co.* v. *U.S.*, 262 F. 2d 245 (8th Cir., 1958), and *Steer Tank Lines* v. *U.S.*, 330 F. 2d 719 (5th Cir., 1963). The fact that the drivers were employed by Respondent at the time of violation, and that Respondent had been put on notice about the regulations and this type of violation previous to this enforcement action are sufficient to establish culpability.

In fact, the Exhibits clearly show that during a prior compliance audit Respondent was advised of the need to institute a progressive system of disciplinary action for hours of service violations and falsification of records of duty status. Obviously, no such system is in place. There is no basis for Respondent's avoiding liability for the actions of its drivers by shifting the burden to their noncompliance. The regulations do not condone a carrier's violations because its drivers do not comply with the requirements.

In the absence of particularized information indicating a vigorous effort on the part of Respondent to educate and discipline its drivers and to review and organize its records in such a manner as to understand the shortcomings of its operations, I must deny the request for a hearing.

Therefore, it is ordered, That Respondent's request for a hearing is denied and Petitioner's request for a Final Order finding the facts to be as alleged in the Notice of Claim dated August 4, 1989, and imposing a civil penalty of $9,600 is granted. Respondent shall pay that amount to the Regional Director within 30 days of the date of this Order.

Dated: February 20, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of John T. Lesnak

[Docket No. R3-88-023]

Order

This matter comes before me upon request of the Regional Director, Office of Motor Carrier Safety, Region 3, for a Final Order finding the facts to be as alleged in a Notice of Claim dated March 1, 1988, and assessing a penalty of $1,000.

The Notice alleged that Respondent violated the regulations by driving in interstate commerce without having a currently valid medical examiner's certificate. The Notice alleges that the certificate in Respondent's possession was forged.

Having reviewed the motion and the documents appended thereto, Petitioner's allegations are substantiated by the record. Nevertheless, this case is now quite old. No purpose will be served by imposing the full penalty requested, to wit, $1,000, assessed on the basis of $250 for each of 4 documented violations. Many more probably could have been substantiated.

The crux of the matter is whether Respondent has in fact corrected the violation. I have these questions:

1. Is Respondent still employed in a position where he drives a motor vehicle in interstate commerce? If so, does he possess a currently valid medical examiner's certificate?

2. If Respondent is found to be operating a motor vehicle in interstate commerce without possessing a currently valid medical examiner's certificate, why has such activity gone without challenge?

The Regional Director is directed to examine this case and determine whether Respondent is still operating in interstate commerce. If the finding is that Respondent is still operating in interstate commerce, the application of a penalty will have some validity. If Respondent has not come into compliance additional action is necessary to bring about compliance.

Therefore, it is ordered, That Petitioner's motion for a Final Order is granted in part. The record supports the allegations and Respondent is found to have violated the regulations as charged. Respondent is directed to pay the sum of $250 for such violation, if he is still employed in a position where he operates motor vehicles in interstate commerce. If Respondent no longer drives in interstate commerce, the penalty is waived. If Respondent still drives in interstate commerce and remains in violation of the regulations, he is ordered to cease and desist from all violating activity immediately. Any penalty due under this Order is to be paid to the Regional Director within 60 days of the date of the Order.

Dated: February 20, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of A.T. Pinto, Inc.

[Docket No. R3-90-006]

Reconsideration of Final Order

On December 7, 1989, I issued a Final Order in this matter. Relying on the absence of written motions or pleadings from Respondent I found that violations had occurred as alleged. The record indicated that the parties were unable to settle this matter and I therefore granted the request imposing a full penalty of $8,100.

On January 10, 1990, I received a letter from Respondent. No service list was attached. The letter was couched in terms of a simple appeal for relief. The Director, Office of Motor Carrier Safety, Region 3, upon being informed of the letter from Respondent, has filed a Motion in Opposition. That Motion correctly points out that there are many procedural irregularities in Respondent's request.

Ordinarily, I would have no problems granting Petitioner's Motion in Opposition. However, there are certain factual allegations raised in Respondent's letter which provide me with an opportunity to discuss this process. Respondent indicates that he met with Program Officials in the Regional Office. At that meeting, the Agency apparently agreed to some reduction in the amount of the penalty. Respondent's counter offer was rejected as too low. Respondent then alleges that he was told the Regional Office had no authority to reduce the penalty by more than 25 percent. Respondent's letter next states:

> I told him that I would like to appeal to higher authority. * * * indicated that the matter would automatically be brought to your attention (in 5 to 6 months) and that I could appeal to you.

Respondent next admits that in fact violations were present but that corrective actions have been taken. What disturbs me is the casualness which appears to surround this entire process. It is this that I would like to address.

There are several concerns in this regulatory program. The highest concern is to provide a safe highway environment for the entire public. We try to achieve this through the promulgation of rules and regulations implementing congressional laws. Compliance with these regulations is necessary to avoid penalty. Education is a necessary part of the process. Throughout the entire process, however, procedural regularity is required, both for Respondent and Petitioner.

All audited carriers must first be informed of the applicability of the regulations. When a Notice of Claim is sent, the regulations should again be prominently mentioned. The Respondent has an obligation to read the regulations and to conform thereto. In discussing the violations and regulations, Petitioner should advise Respondent of the necessity for procedural regularity. Petitioner must not dispense casual advice as to general nature of the regulatory process and must clarify procedural rights for the Respondent.

In this case, if Respondent is correct he was misled. His appeal to higher authority on the amount of a penalty claim is not provided by right in the regulations. The amount of the penalty is not a material issue in fact entitled to a hearing. Negotiations, if at an impasse, must proceed along the line of enforcement authority. That channel includes the Regional Director and the Director of the Office of Motor Carrier Safety Field Operations. These matters should not be automatically brought to my attention.

Respondent has an obligation to participate in the administrative process fully and in accordance with the regulations. Somewhere in the chain of command note will be taken of his arguments and operations, if documented. I have repeatedly stated that the assessment of the penalty is best left to those closest to the alleged violations. I have also stated that I reserve the right to alter a penalty assessment if the record warrants such change. But I am not the disburser of financial good will in this process.

This program must not become a wooden, bureaucratic regimen, hiding behind such strictures as the 25 percent rule. Penalties should be assessed in line with the violations alleged. Reductions in settlement should rely upon the presentation of good information. Failure of the parties to agree indicates that either the penalties are assessed too high, there has been a breakdown in communications in the enforcement chain of command, or the respondent is not aware of the seriousness of violations and the necessity for high penalties.

I have faith that the Agency's Program Officials are carrying out their responsibilities in a positive, good-faith

manner. We have embarked on a relatively new process here. Everything in that process is underscored by the requirement for procedural regularity. That is the minimum requirement.

It appears to me that Respondent has in fact taken considerable effort to achieve a satisfactory level of compliance. It also appears that the Regional Director was willing to settle this claim for less than originally assessed. For whatever reason, Respondent was misdirected in his attempt to further resolve this matter. Respondent is cautioned that he should remain in compliance, follow procedural requirements and inform himself of his procedural rights.

Therefore, it is ordered, That upon reconsideration of the information as presented to me I am modifying my Order of December 7, 1989. Respondent shall pay the sum of $4,000 to the Regional Director within 30 days of the date of this Order.

Dated, February 20, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of American Bulk Transport Co., Inc.

[FHWA Docket No. R7–89–08 (Motor Carrier Safety)

Order of Civil Penalty and Order Canceling Hearing

By motion dated January 17, 1990, FHMA Regional Counsel requests that final decision be entered in the form of an order of civil penalty. In support of its motion, Regional Counsel states that:

1. On September 19, 1989, Requests for Admission were served on Respondent, by and through its counsel, Robert B. Zeldin, Suite 240, 8330 Ward Parkway, Kansas City, Missouri 64114 * * *.

2. Said requests for Admission requested Respondent to admit or deny every material issue of fact alleged in the Notice of Claim served on Respondent on November 22, 1988 * * *.

3. Said Requests for Admission required Respondent to respond within 20 days of receipt thereof.

4. Respondent has failed to respond to said Requests for Admission within the prescribed time, and has still failed to respond despite the passage of 60 days at the time of the filing of this Motion.

5. Pursuant to the Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR 386.44, "[t]he matter is admitted unless within 15 days after service of the request, the party to whom the request is directed serves upon the party requesting the admission to written answer signed by the party or his/her attorney." (See also Rule 36(a), Federal Rules of Civil Procedure).

6. The Admission of the information contained in the Requests for Admission leaves no material issue of fact in dispute between the parties.

7. There being no material issues of fact in dispute, a hearing on the matter is unnecessary.

8. Findings of Facts based on the Notice of Claim and supporting documents are warranted.

No answer to the motion has been received. Accordingly, pursuant to 49 CFR 386.44 and 49 CFR 386.61, I enter a decision that upholds the allegations in the Notice of Claim dated October 26, 1988 and enters a civil penalty in the amount of $10,500. Pursuant to 49 CFR 386.61 and 62, if no petition for review is filed within 45 days from the date of service herein, this decision and order becomes the final order of the Associate Administrator.[1]

Burton S. Kolko,

Administrative Law Judge.

In the Matter of Channel Solvents and Chemicals, Inc.

[Docket No. R6–88–41]

Final Order

This matter comes before me upon request for a Final Order submitted by the Regional Director, Office of Motor Carrier Safety, Region 6. This motion requests that we find that the allegations of violation of the regulations as set forth in a Notice of Claim issued on July 12, 1988, be established and that a civil penalty of $3,000 be imposed. Respondent (Channel Solvents and Chemicals, Inc.) has not replied. I find that there has been no request for a hearing and that Respondent has not denied the violations as charged.

Nevertheless, it appears that some evidence of Respondent's having the required insurance was produced after somewhat lengthy and protracted attempts on the part of the Regional Director to resolve this matter.

Having reviewed the Motion and the supporting documents attached thereto, it appears that the Respondent did not have in its files as required the Form MCS–90. This is a violation. The Director, in recognition of the fact that the insurance coverage appeared to be in place, but that the documents were not in order in the files as required, offered to resolve this matter on payment of a $1,500 civil penalty.

Therefore, it is ordered, That the Motion for a Final Order is granted. The civil forfeiture penalty is established at $1,500 which Respondent is directed to pay to the Regional Director within 30 days of the date of this Order.

[1] In view of the foregoing, the hearing scheduled for March 13, 1990 is cancelled.

Dated: January 30, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Williams Bus Excursions

[Docket No. R3–88–015]

Final Order

This matter comes before me upon request of the Regional Director, Region 3, for a Final Order finding the facts to be as alleged in a Notice of Claim dated February 16, 1988.

Having reviewed the Motion and the supporting documents appended thereto, I find that although informal contacts were made by telephone, no formal written response or request for hearing has ever been made. The evidence stands uncontroverted and therefore supports the charges and specifications in the Notice of Claim relating to violations of the regulations requiring that Respondent maintain proof of financial responsibility at its principal place of business.

Therefore, it is ordered, That Respondent is directed to pay the penalty of $1,000, as requested in the Motion for Final Order. This sum is to be paid to the Regional Director within 60 days of the date of this Order.

Dated: January 30, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Medi-Call Ambulance Services, Inc.

[Docket No. R3–89–202]

Final Order

This matter comes before me upon request of the Regional Director, Office of Motor Carrier Safety, Region 3, for a Final Order finding the facts to be as alleged in a Notice of Claim dated September 25, 1989, and assessing a penalty of $750.

The Notice of Claim alleged a violation of 49 CFR 387.31(d), failing to maintain proof of financial responsibility at the principal place of business. The Respondent has not requested a hearing.

Petitioner alleges that only a blank MCS–90B, attached to an insurance policy, was in the files at the time of the audit. The petitioner alleges that an incorrect endorsement would nullify the coverage required.

Respondent argues that the deficient MCS–90B attached to the policy was sufficient, that a FAX copy provided to the investigator would have cured any irregularity, that there was no violation. Respondent argues that it has never

operated without maintaining the proper coverage.

The record indicates that this is not the first time Respondent has encountered an investigator or the requirement of the regulation. The regulation is clear. It states: "Proof of the required financial responsibility shall be maintained at the motor carrier's principal place of business." The regulation does not state that the proof shall accord with industry practices or that the carrier could decide where to keep the form.

Our audits are designed to ensure compliance with the regulations. The regulations have been promulgated to ensure highway safety. The field agents are to have access to certain documents to ensure that the required information is available. There is then a deficiency here. It may be technical, but it is not petty. The Respondent had prior notice and its records should have been in order.

Therefore, it is ordered, That Petitioner's motion for a Final Order is granted. The record supports the allegations. However, the request for a final order is modified to reduce the assessed penalty to $100. The Respondent shall pay the sum of $100 to the Regional Director within 30 days of the date of this Order.

Dated: January 24, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Vend-Rite Service Corporation

[Docket No. R3-90-050]

Final Order

This matter comes before me upon Motion for Final Order and in Opposition to a Request for Hearing filed by the Regional Director, Office of Motor Carrier Safety, Region 3. This Motion was filed in response to a letter from Vend-Rite Service Corporation (Respondent) which was in turn a reply to a Notice of Claim dated December 4, 1989. The Notice of Claim alleged 16 violations of the Federal Motor Carrier Safety Regulations (FMCSRs) and assessed a penalty of $5,600.

The letter from Respondent reserved the right to request an administrative hearing and contested the Notice of Claim. Respondent advances as reasons for contesting the Claim that it was aware of no other vending companies subject to an audit and that it was not sure that the regulations applied in its case.

Petitioner argues that Respondent is not entitled to a hearing as no material factual issues have been identified as required by the regulations, 49 CFR 386.14(b)(2).

It is unclear from Respondent's letter whether it is in fact requesting a hearing at this time, however, we will review the pleadings as if such a request has been made. Respondent contends that it is not clear in the regulations as to the applicability of the FMCSRs to its case. Respondent cites to § 383.5 in support of its contention

The citation in and of itself provides evidence of some familiarity with the regulations. When viewed together with the evidence in the record of prior contacts (1984 letter and Safety Review in 1988), it appears that Respondent is attempting to hold Petitioner responsible for its own misreading of the regulations. The regulations state in the definition section, § 390.5 under Commercial Motor Vehicle, that the regulations are applicable to vehicles with weight ratings of 10,001 or more pounds. Denial of the allegations on the basis of confusion over the regulations cannot support a hearing in light of the prior experience of this carrier.

Respondent also contends that because no other vending company is familiar with the regulations, it is unfair to hold it to the requirements of the FMCSRs. I do not know whether any other vending companies have ever been audited or cited for violations but if Respondent will provide us with a list of names and addresses, I will be happy to include them in the number of businesses to be audited within the near future. Nevertheless, Respondent should be aware of the fact that we are operating in an atmosphere of heightened enforcement. The Congress has directed this Agency to upgrade its efforts to ensure the safety of the traveling public and many businesses not formerly within the reach of our limited program resources are finding themselves subject not only to the regulations but also to safety audits.

I find that Respondent advances no good reasons either in law or equity to excuse these violations completely. However, as the Regional Director did recognize efforts of Respondent to come into compliance and offered a reduction of the penalty, I find that to encourage a positive compliance posture in the future I will accept the reduced amount quoted in Respondent's letter.

Therefore, it is ordered, that Respondent has not complied with the requirements of the regulations and that no hearing can be granted. Petitioner's Motion to Deny Hearing is granted. Petitioner has requested a Final Order assessing the full amount of the penalty, $5,600. For the reasons set forth above, I am granting the Motion for a Final Order in the amount of $4,200. Respondent shall pay that amount to the Regional Director within 30 days of the date of this Order.

Dated: January 24, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of M & T Trucking Services, Inc. V. I. Gas, Inc., Challenger's Trucking Inc.

[Consolidated Docket No 89-41]

Final Order

This matter comes before me upon request of the Respondents for an Administrative Hearing on the claims against them for failing to comply with the required minimum levels of financial responsibility regulations, 49 C.F.R. part 387. The Regional Director, Office of Motor Carrier Safety, does not contest the unavailability of insurance in the Virgin Islands.

It appears that each of the carriers maintains insurance coverage at the limits available to them. Therefore, following the reasoning set forth in the matter of *Empire Gas, Inc.*, the companies will be found to be in technical violation of the regulations. The Regional Director will periodically monitor the situation with respect to the availability of the required amounts of insurance in the Virgin Islands.

Therefore, it is ordered, that no material issues of fact existing, no cause for a hearing has been shown and the request is denied. However, as there is no insurance available in the required amounts in the Virgin Islands at the time of violation, I find that a technical violation exists and the Respondent carriers shall pay the amount of $1.00 each to the Regional Director within 30 days of the date of this Order.

Dated: January 24, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of White's Bus Rental, Inc.

[Docket No. R3-90-039]

Final Order

This matter comes before me upon request of the Regional Director, Office of Motor Carrier Safety, Region 3, for a Final Order finding the facts to be as alleged in a Notice of Claim dated November 27, 1989, and assessing a penalty of $9,750.

Respondent has not requested a hearing and the parties have been unable to reach any compromise agreement. The Notice of Claim alleged serious violations, including a substantial health and safety violation for operating a motor vehicle (bus) in

such condition as to be likely to cause an accident or break down.

Having reviewed the Motion and the supporting documents attached thereto, I find that the evidence supports the charges and specifications therein.

Therefore, it is ordered, That Respondent is directed to pay to the Regional Director the sum of $9,750 within 30 days of the date of this Order.

Dated: January 23, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Stenger Gas Corp.

[Docket No. R3-89-185]

Final Order

This matter comes before me upon request of the Director, Office of Motor Carrier Safety, Region 3, for a Final Order finding the facts to be as alleged in a Notice of Claim dated September 11, 1989, and assessing a penalty of $6,000.

The Notice of Claim alleged 15 violations of the Federal Motor Carrier Safety Regulations (FMCSRs). The record indicates that the Respondent has had prior notification of the applicability of the regulations and that there has been prior contact with the Agency. Although there has been some ostensible contact on this Notice of Claim, no request for a hearing has been made and no indication of material issues in dispute is present. Upon review of the record, I find adequate documentation to support the findings and allegations of violations.

Therefore, it is ordered, That the Motion for a Final Order is granted and Respondent is directed to pay the full assessed amount of $6,000 to the Regional Director within 30 days of the date of this Order.

Dated: January 23, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Stanford & Inge, Inc.

[Docket No. R3-89-211]

Reconsideration

This matter comes before me upon request for Reconsideration filed by Counsel on behalf of Respondent. In its petition, Respondent avers that it is a small corporation, that it had no intent to purposely avoid or evade the regulations, that it is now in full compliance with the regulations and that it will suffer financial hardship if required to pay the amount levied in the Final Order.

The Regional Director, Office of Motor Carrier Safety, Region 3, has responded to the Motion for Reconsideration. No procedural objections have been raised and I will therefore accept the Petition.

I cannot, however, grant the full relief requested by Respondent. It appears from the record that Respondent has had prior contacts with the Agency and should have been familiar with the requirements of the regulations. Respondent's silence throughout the course of these proceedings speaks of the relatively low importance Respondent apparently considers the regulations, their enforcement and the role of the Agency. It is not until a fairly painful penalty was assessed that the seriousness of this matter came home to Respondent.

I have recently addressed the plight of small, private carriers in complying with the regulations in another case, *In the Matter of Action Metal Co., Inc.* I am attaching a copy of that Final Order. Its contents apply here, except for the final paragraph in the main text.

The regulations are important, the process of determining compliance and enforcing is important, and casualness towards safety is not acceptable. We must make our judgments on the basis of a record review. Employees of this Agency must make determinations based upon the record. As stated in *Action Metal,* the Regional Director is closer to the operations of Respondent. Generally speaking, cogent reasons for the mitigation of a penalty will be brought out in the process of negotiations or discussions surrounding compliance actions.

I cannot find any evidence in the record supporting a major reduction of this penalty. Respondent contends it is now in full compliance. Respondent should have been in full compliance prior to this action based upon its earlier contacts with the Agency. Nevertheless, I am aware of the difficulties faced by smaller entities. As the Regional Director has indicated a willingness to accept a reduced penalty, provided additional evidence is presented supporting the request, I will reduce the penalty assessed subject to the presentment of that evidence to the Regional Director within 30 days of the date of this Order. Further, I will accept a schedule of payments over a period of not to exceed 90 days to be worked out between the parties.

Therefore, it is ordered, That the Final Order issued on November 21, 1989, is modified to the extent accepted by the Regional Director after review of additional information to be presented by the Respondent within 30 days of the date of this Order. Failing the production of such information, the Final Order will apply in its entirety.

Attachment: Final Order: In the Matter of Action Metal Co., Inc., Docket No. RI-89-244.

Dated: January 22, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Industrial Nuclear Company, United States Testing Company, Inc.

[Docket No. R9-90-002]

Order Granting Extension of Time

This matter comes before me upon Motion of Respondent for Additional Time to Respond to a Notice of Claim and also a request for records under the Freedom of Information Act. The Notice of Claim was issued on December 20, 1989, and alleges 7 violations of the Hazardous Materials Transportation Regulations for which a civil assessment of $70,000 is made.

Counsel for the Director, Office of Motor Carrier Safety, Region 9 (Petitioner), does not object to the grant of additional time. The Respondent will be provided with a copy of the Agency investigation report and Petitioner avers that 30 days from receipt should suffice.

Respondent's Motion requests the investigation report and other related materials under the Freedom of Information Act. Such a request is not properly made in a Motion under 49 CFR part 386. However, as Petitioner is providing the investigation report, it is unnecessary for us to discuss this issue further.

As both parties agree that additional time to respond is necessary, I am granting Respondent's Motion. Respondent requested until March 15, 1990, or 30 days after receipt of the requested materials. No good reason having been advanced for the necessity of establishing receipt and determining a 30 day future period, the March date appears to satisfy all requisites of these proceedings.

Therefore, it is ordered, That Respondent's Motion for Additional Time to Respond is granted. The new reply date for the Notice of Claim is March 15, 1990.

Dated: January 19, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Strong Trucking (Ashbell & Mary Strong, d/b/a)

[Docket No. R3-88-061]

Order

On November 24, 1989, I issued an Order setting forth several questions which I wanted Petitioner to consider. Petitioner was instructed to review this

matter and file an amended request or withdraw the motion.

On December 27, 1989, Petitioner filed a Motion Requesting Withdrawal of the Motion for Final Order. It appears that further investigation has revealed that the carrier has gone out of business and that no tangible assets remain.

It is therefore ordered, That this matter is dismissed.

Dated: January 12, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Krug Trucking Co. (Michael Krug d/b/a)

[Docket No. R3–89–125]

Final Order

This matter comes before upon request of the Regional Director, Region 3, Office of Motor Carrier Safety (Petitioner) for a Final Order finding the facts to be as alleged in a Notice of Claim dated July 28, 1989. That Notice alleged that 11 violations of the Federal Motor Carrier Safety Regulations (FMCSRs) and Financial Responsibility requirements had been documented.

Respondent did not request a hearing and in his correspondence reply asserted corrective actions had been taken, requested a compromise offer and requested time to pay any penalty based on financial status.

Petitioner has taken into account Respondent's requests and now asks for a penalty of $3,000.

Therefore, it is ordered, That in the absence of any material factual issues in dispute and any request for hearing, the alleged violations are supported by the record. Respondent shall pay the Regional Director the sum of $3,000 within 90 days of the date of this Order.

Dated: January 10, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Action Metal Co., Inc.

[Docket No. RI–89–244]

Final Order

This matter comes before me upon request of Action Metal Co., Inc. (Respondent), for a hearing and Motion in Opposition thereto and request for a Final Order filed by the Regional Director, Region 1, Office of Motor Carrier Safety (Petitioner). Petitioner alleges that Respondent has committed 9 violations of the Federal Motor Carrier Safety Regulations (FMCSRs). There has been previous contact with the Respondent, earlier violations have been found of a similar nature, and the Respondent has been given a copy of the applicable regulations governing this matter.

Respondent is a small, private carrier, and asserts that it carries only its own steel. The total distance driven is 48 miles one way. The Respondent, through its President asserts that 9 violations of the same charge is unfair and that only one violation and penalty should be charged.

This case presents us with an interesting set of facts and propositions. Many smaller businesses are now falling within the scope of the FMCSRs. The Agency's increased enforcement has reached many businesses not formerly visited by an investigator. We hear quite often that the charges are unfair, the fines too high and due process is unavailable. The Congress has passed stringent laws and has directed the Agency to upgrade its enforcement efforts. The end purpose is a safer highway environment. Smaller businesses are just as culpable as larger entities. The fines imposed may have a greater impact on the bottom line, but a fatality resulting from a violation by a smaller business is just as dead as one resulting from a violation by a larger business.

This Agency operates on a relatively decentralized chain of command. Those officials closest to the audits and violations are in the best position to determine the amount of the fine. We have stated this premise over and over. There are several levels of review, culminating with the potential for administrative review. If there are sufficient, cogent reasons supporting the reduction of a fine, they will be brought out in the process, considered and acted upon.

At the same time, there are rules, regulations and Procedures in place which must be followed to ensure impartiality and equity of treatment and application. It is not sufficient that a business feels it is small and therefore should be held to a lesser standard. It is not sufficient that a business feels it should receive a $10 penalty as if these violations were traffic citations. Human life is sacred. The laws of this Country are important. The regulations of this Agency must be followed. Any company which does less, or believes less places the public at risk and itself at risk. The penalties assessed are designed to create an awareness of the necessity for compliance. Obviously, some entities comply faster than others.

There is not the slightest evidence of any good faith attempt to comply with the regulations here. An attitude of casualness permeates the Respondent's filings. No facts are placed in evidence; only peevish excuses. Such are not enough.

Therefore, it is ordered, That Respondent having failed to comply with the requirements of the regulations governing this process, has not made a valid request for hearing and his request is denied. Petitioner has provided evidence of violations and no reason supporting a request for reduction of the penalty has been substantiated. Petitioner's request for a Final Order is granted and Respondent is directed to pay to the Regional Director within 30 days of the date of this Order the sum of $2,700.

Dated: January 10, 1990.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of J.R. Christoni

[Docket No. RI–89–223]

Final Order

This matter comes before me upon request of the Director, Region 1, Office of Motor Carrier Safety (Petitioner) for a Final Order finding the facts to be as alleged in a Notice of Claim dated September 20, 1989. Respondent has requested a hearing and Petitioner objects thereto on the basis that Respondent's request fails to comport with regulatory requirements.

The Notice of Claim alleges numerous violations of incomplete files, excess hours and false entries upon the record of duty status. These violations have been substantiated by a Compliance Review and report thereof. This is not the Respondent's first contact with the Agency or the regulations. In fact, there have been previous violations.

In its initial reply and request for a hearing, Respondent generally denied the allegations and submitted that its drivers did not engage in "serious" violations. Respondent also stated that the Notice of Claim does not provide the complete factual situation. Respondent then stated that at the hearing it intends to submit its position that there are material factual issues in dispute.

Respondent followed up with a second filing taking umbrage at Petitioner's Motion and objecting on the basis that a denial would limit its right to cross-examination. Without such, Respondent contends, it is unable to be more specific and precise.

Perhaps Respondent and its Counsel should read the regulations. 49 CFR 386.14 clearly requires that each reply must contain an admission or denial and a concise statement of facts and each request for a hearing must contain a listing of all material factual issues

believed to be in dispute. It is not for Respondent to determine violations are "serious" and which are not. The law, the regulations and the administration thereof by this Agency will determine if a violation has taken place and will assess a penalty based on the seriousness of that violation.

The regulations nowhere contemplate the use of the administrative hearing process as a fishing expedition. Surely, if Respondent wishes to advance the argument that its alleged violations are not of a serious nature it should have ample facts readily available to list those material factual issues needing a determination. It boggles the mind to try to understand the claim that violations have not occurred, are not serious, but the specifics to support these contentions are unavailable without cross-examination.

Respondent requested an opportunity to meet informally with Petitioner to resolve these matters. Surely, if there was anything unclear about the alleged violations, the audit report or the hearing process, a simple question to Petitioner would have clarified the entire matter.

The regulations do not contemplate dilatory tactics, lack of preparation or carelessness on the part of pleaders in knowing the basic requirements governing the process.

Of a more substantive nature, examination of the pleadings and the documents appended thereto establish that there have been violations, that these violations are serious and that they stand not controverted by Respondent.

Therefore, it is ordered, That Respondent's request for a hearing fails to meet the basic requirements of the regulations and is hereby denied. Petitioner's motion for a Final Order finding the facts to be as alleged in the Notice of Claim and imposing a civil penalty is hereby granted. Respondent is directed to pay the amount of $22,000 to the Regional Director within 30 days of the date of this Order.

Dated: December 26, 1989.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Calgon Corporation

[Docket No. R3–89–171]

Final Order

This matter comes before me upon request of Calgon Corporation (Respondent) for a hearing on the alleged violations charged in a Notice of Claim dated August 29, 1989. The Regional Director, Region 3, Office of Motor Carrier Safety, does not object to the request for a hearing.

The Notice of Claim alleges four violations of the regulations: one is for violation of the Financial Responsibility requirements in that Respondent did not have a copy of an MCS–90 in the files; three are for failure to retain written reports of visual inspections of a cargo tank in the files for two years after the date of inspection. The latter three violations involve only two tanks, however, three interstate trips have been made.

Respondent has corresponded several times with the Director. Respondent denies the alleged violations and has presented a Certificate of Insurance from an insurance agency showing the required level of insurance and a statement of visual inspection from a mechanic, accompanied by proof thereof.

With respect to the violation of the Financial Responsibility regulations, § 387.7(d) specifically requires that a Form MCS–90, issued by the insurer be maintained in the files. Respondent, even now presents only a Certificate of Insurance. Although seemingly innocuous and overly technical, it is only through perusal of the MCS–90 that the Agency can be assured that all requisite insurance coverage, including environmental restoration, is in place. There is a violation, the violation has been proven and the violation is continuing. Respondent shall take all necessary action to obtain the MCS–90 immediately.

With respect to the three violations of the regulations, failing to retain written reports of each visual inspection of a cargo tank for a period of two years, Respondent has provided statement to the effect that the inspections were performed, that there are written inspection reports and that these reports were in the files at the time of the audit. The Director has failed to respond to this information. There are no statements or affidavits from the reviewing agents rebutting this information, nor is there any indication in the record that these forms are in some way inadequate. There is more than a material factual issue in dispute here, there is a failure to prove and substantiate the allegation.

Therefore, it is hereby ordered, That Respondent's request for a hearing is denied. The violation of § 387.7(d) has been established and Respondent shall pay to the Director $750 within 30 days of the date of this Order. The alleged violations of § 177.824(b) are dismissed.

Dated: December 26, 1989.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Wonder Chemical Company

[Docket No. R3–88–073]

Order Appointing Administrative Law Judge

This matter comes before me upon a Request for Determination On Agreed Statement of Facts submitted by the Director, Region 3, Office of Motor Carrier Safety. The agreed Statement of Facts has been jointly signed by attorneys for both parties.

On September 25, 1989, a Notice of Claim was issued to Wonder Chemical Company (Respondent) by the Director (Petitioner) alleging 6 violations of 49 CFR 387.7(a) failing to maintain the minimum levels of financial responsibility. The Agreed upon Statement of Facts establish that there were at least 6 trips within the scope of the regulations; that the involved vehicles were leased; that the lessor did have the required financial responsibility coverage; that Respondent had in its possession an MCS–90 in the name of lessor; that the insurance company issued a Certificate of Accord stating that Wonder was covered by the policy issued to lessor; that Wonder did not have an MCS–90 in its own name while operating the vehicles at the time of the alleged violations.

Throughout the discussions between the parties leading up to this request for a determination, Respondent has maintained that it (a) did have the required level of financial responsibility under the regulations, and (b) that the MCS–90 issued to its lessor was sufficient to comply with the regulations There are two subsections of the regulation involved here. In § 387.7(a) motor carriers are required to obtain and have in effect the minimum levels of financial responsibility set forth. In § 387.7(d) it is required to maintain proof thereof at the principal place of business (Form MCS–90 issued by an insurer).

The Agreed upon Statement of Facts do not resolve this matter. There remain two significant material issues in dispute here. Firstly, does the acknowledgement by the insurer that Respondent is covered by the insurance policy issued to the lessor meet the requirements of the regulations, specifically § 387.7(a). Respondent contends it has the required levels of insurance and has proferred proof of such through this Certificate of Accord issued by the insurer. Petitioner apparently contends no insurance or

less than the required level of insurance has been shown to exist.

Secondly, notwithstanding the establishment of the required levels of insurance, it appears that there is a dispute as to whether Respondent has an MCS–90 as required. Respondent has an MCS–90 albeit issued in the name of its lessor. Petitioner has failed to allege a violation of the regulations, to wit § 387.7(d). However, the answer to this question has a bearing on the alleged violation and the quantum of the penalty.

Notwithstanding the Agreed upon Statement of Facts there are material factual issues to be established sufficient for me to assign this matter to an Administrative Law Judge (ALJ) for additional proceedings. The ALJ assigned shall, in addition to the authority below, specifically address the matters above and should review both the record presented, oral argument and briefs prior to makinq his or her recommendation to me, including the quantum of any assessment if a violation is found.

Therefore, it is ordered, That I hereby appoint an Administrative Law Judge in accordance with 49 CFR 386.54(a) (1985) to be designated by the Chief Administrative Law Judge of the Department of Transportation as the Presiding Judge. The Judge appointed is authorized to perform those duties specified in 49 CFR 386.54(b) (1985).

Dated: December 2, 1989.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Leroy Randolph

[Docket No. R3–88–090]

Final Order

This matter comes before me upon request of the Regional Director, Region 3, Office of Motor Carrier Safety, for a Final Order finding the facts to be as alleged in a Notice of Claim dated December 7, 1988, and assessing a penalty of $700.

It is alleged that Respondent violated 49 CFR 391.15(a) by operating a motor vehicle on two trips while his license was suspended. Although there has been correspondence between the Respondent and Director, no request for a hearing has been made. The facts are clear: Respondent knowingly violated the regulation. It is unfortunate that such occurrences take place; they should not. This is not a case of reasonable doubt or ostensible excuse. It is a flagrant violation and I am unable to find any rationale warranting a reduction of the amount assessed.

Therefore, it is ordered, That the evidence supports the charges and specifications as set forth in the Notice of Claim and Respondent is directed to pay the sum of $700 to the Regional Director within 60 days of the date of this Order.

Dated: December 21, 1989.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the matter of John Steven Johnson, in his Individual Capacity as President of Steve Johnson and Sons Trucking, Inc., and Steve Johnson & Sons Trucking, Inc., a Corporation

[Docket No. R9–89–058]

Denial of Petition For Reconsideration

On October 20, 1989, Respondent submitted a Motion for Reconsideration of the Final Order issued on September 20, 1989. Respondent makes an elaborate argument that his Request should not be denied on procedural grounds for dilatory filing. Without attempting to sort out the facts advanced by Respondent we will accept the Petition for purposes of review.

Notwithstanding this review, we find no reason to recall or otherwise modify the Final Order. To recap briefly, the Final Order found that no request for a hearing had ever been made in this matter, that communications received from the Respondent were querulous and admitted culpability, disclaimed responsibility for the actions of others, to wit, employees, and denied knowledge of the requirements of the regulations despite past encounters with this Agency.

Now suddenly, through Counsel, Respondent recognizes the foolhardiness of venting his spleen in the bizarre manner originally chosen. Respondent seeks another bite of the apple in this Petition. Nevertheless, the basic thrust of his arguments has not changed. There has not been established a request for a hearing in compliance with the regulations. There continues to be a disavowal of the responsibility to manage this business in accord with the regulations, which includes the responsibility to know of the misfeasances or malfeasances of employees by reviewing the record. The issue is not, as Respondent would have it, whether he should require his employees to change any statements after the fact. The issue is: did the corporation or its employees violate the regulations. Clearly in this case, such violation is present.

No letter or communication from Respondent has been responsive. I still have difficulty reading, let alone understanding, the filings of Respondent and Counsel in this matter. The law and regulations do not tolerate financial, legal or administrative skullduggery. This business has been run in a sloppy manner, legal violations have been documented, and no proper defense has been raised. I will state for the record that the silence of petitioner in this matter is a dangerous and unfounded precedent. This matter is clear for us and we find no difficulty in reaching the conclusions reached. However, Counsel is cautioned that lest he find himself in the same Position as Respondent in the future, he should support his case with filed pleadings.

Therefore, it is ordered, That the Petition for Reconsideration is denied and the terms of the Final Order remain in effect.

Dated: December 20, 1989.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Williams Bus Excursions

[Docket No. R3–88–015]

Final Order

This matter comes before me upon request of the Regional Director, Region 3, for a Final Order finding the facts to be as alleged in a Notice of Claim dated February 16, 1988.

Having reviewed the Motion and the supporting documents appended thereto, I find that although informal contacts were made by telephone, no formal written response or request for hearing has ever been made. The evidence stands uncontroverted and therefore supports the charges and specifications in the Notice of Claim relating to violations of the regulations requiring that Respondent maintain proof of financial responsibility at its principal place of business.

Therefore, it is ordered, That Respondent is directed to pay the penalty of $1,000, as requested in the Motion for Final Order. This sum is to be paid to the Regional Director within 30 days of the date of this Order.

Dated: December 19, 1989.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Hunter Oil Company, Inc.

[Docket No. R3–88–089]

Interim Order

This matter comes before me upon request of the Regional Director for a Final Order and his stated opposition to the request of Respondent for a hearing.

On November 30, 1988, Respondent was sent a Notice of Claim alleging 20 violations of the regulation requiring drivers to make daily records of duty status. All of the alleged violations involved one driver. The Notice assessed a penalty of $450 for each of the 20 alleged violations for a total of $9,000.

Respondent (Hunter Oil) in its answer to the Motion for Final Order submits a letter of December 15, 1988, which was in response to the Notice of Claim. This letter requested a hearing and set forth a statement of facts and explanation of the facts. This letter was inexplicably Omitted from the Regional Director's filing.

Discussions between the parties have not resolved the outstanding issues. Nevertheless, the record appears to reveal that there was a technical deficiency of the regulations present here. The facts, as set forth in a letter of February 10, 1989, from Respondent, not controverted by the Director, appear to be that Respondent is a small, family owned business with three drivers. Deliveries appear to be for the most part local in nature. The driver in question has had a change in status with the company. There is no indication in the record of transgressions in the past of the same or similar nature.

Respondent has taken efforts to correct the technical deficiency alleged and contends that there was a compliance in spirit, if not letter with the regulations.

It is my feeling that matters of this nature are capable of resolution at the local level. The transportation of hazardous materials requires an extraordinary degree of caution. Strict compliance is expected by the law and regulations. At the same time, smaller business entities may feel disadvantaged by the onerous requirements placed upon them, and to some degree they are. It is our intent to secure a safe driving environment for the public. This means that carriers subject to our regulations must operate in a climate of compliance.

It does not mean, however, that such entities will or should be subjected to high penalty amounts unless the record clearly shows that the violations are of a magnitude as to warrant high assessments. The Regional Director and his staff are commended for the diligence of effort to visit with, review the record of and document the violations of all carriers in the Region. Such efforts are not to be minimized.

Care must be taken to completely and thoroughly document the reasoning underlying penalty assessments. In the absence of such materials in the record, the thought process remains a matter for dispute. The record here indicates 20 short trips made by a driver with a long-standing record of employment with the carrier, with no apparent noncompliance. Without additional information, I choose to view this as a single infraction, easily correctable. The Director should work with the carrier to reach an understanding of what record-form is acceptable.

As I have indicated in the past, it is only with great reluctance that I will interfere in the assessment of a penalty. The Regional Director is closer to the alleged violation and the circumstances surrounding the carrier's operations. Notwithstanding this reluctance, I do exercise the option of altering the penalty assessment where warranted. A violation exists or it does not exist. The penalty therefore, if proven, is more subjective. My aim in this Order is to ensure the future compliance of the carrier. I cannot find within the four corners of the documents submitted to me a justification for this magnitude of penalty. If there be such it is lost in the mists of bureaucracy.

Therefore, it is ordered, That Respondent is in technical violation of the regulation, although there are factual differences present which could alter this conclusion. There are two choices before me at this time. Respondent may pay a penalty of $450 within 30 days of the date of this Order to the Regional Director and work with the Director to arrive at a mutually agreeable form to bring about complete compliance; or 2. I shall appoint an Administrative Law Judge to determine whether the facts support the establishment of the alleged violations (20 at $9,000). As option 1 is self-executing, payment of the penalty as set forth will terminate this matter. Option 2 needs additional communication before it will be effected. If Respondent still wants a hearing before an Administrative Law Judge, he must forward a letter to the Docket and all parties on the Service List within the 30 day period.

Dated: December 19, 1989.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of E.L. Lawson Trucking, Inc.

[Docket No. R1–89–015 (Formerly RI–89–245)]

Final Order and Order Appointing Administrative Law Judge

This matter arises out of a Notice of Claim, dated October 6, 1989, issued by the Regional Director, Region 1 (hereafter referred to as Petitioner or Director). The Notice of Claim alleges that E. L. Lawson Trucking, Inc. (hereafter referred to as Respondent) violated the Federal Motor Carrier Safety Regulations (FMCSRs). It is alleged that four separate regulations have been violated: 49 CFR 391.15; 49 CFR 394.9; 49 CFR 395.3; and 49 CFR 395.8. The alleged violations for two of these regulations, constituting 9 separate alleged violations, have been brought as substantial health and safety violations, which incur much higher penalties.

The Respondent has contested these allegations and has requested an administrative hearing. Among the requirements governing the request for a hearing two elements which must be strictly complied with are the requirement that the request must be accompanied by a denial and concise statement of facts and a listing of all material factual issues believed to be in dispute.

With respect to the alleged violations of § 391.15, Respondent contends that it did not know the driver's license had been suspended and that he was disqualified. The ambiguity surrounding the alleged violation allows the simple statement that knowledge was not present to meet the requirements of the regulation. There are material factual issues in dispute. However, this is not to say that Respondent's reply would have met the test under all circumstances. Could Respondent have been the victim of circumstances by timing or failure of the driver to notify him of the suspension? Was Respondent careless in review of the required files? What is there in this particular violation that constitutes a substantial health and safety violation? Was the Respondent's behavior such that it could be characterized as negligent or wanton? Were the transgressions underlying the disqualification significant in that they involved alcohol or drugs or gave rise to a fear that the motoring public was in jeopardy? The Administrative Law Judge must make two determinations here: 1. Has a violation of the regulation been established? 2. If so, can it be supported that there was something in this violation that raised the threshold of the penalty? If the ALJ finds in the affirmative on question 1, but negative on number 2, then it will be necessary for the Notice of Claim to be amended.

With respect to the alleged violations of § 394.9, it has been documented that Respondent failed to report accidents. Respondent replies he had no knowledge that he was required to report all accidents. The regulations are clear on what must be reported. Respondent has been involved in prior matters with the Petitioner and is

charged with knowing the requirements of the regulations. I am denying the request for a hearing on these violations and issuing a Final Order herein assessing a penalty of $1,500 for three violations ($500 for each violation).

With respect to the alleged violations of § 395.3 requiring or permitting a driver to drive after having been on duty more than 70 hours in 8 consecutive days, Respondent denies the violation and contends drivers were instructed to stop driving. This is sufficient to call the question for hearing. The ALJ should focus on how the drivers were so instructed. Was disciplinary action taken against any driver? Has any driver ever been suspended or terminated for continued driving? How did the Respondent monitor this situation? Neither an oral warning nor even a memorandum without some threat of disciplinary action is sufficient to constitute a complete defense to this charge. Further, in view of the unreported accidents of Respondent and prior enforcement actions in this area, a prima facie case has been made for substantial health and safety violations if the basic violation is established.

With respect to the alleged violations of § 395.8 requiring or permitting false entries upon a record of duty status, Respondent denies the allegations and contends that "when the employer had knowledge of false entries, the employee was told to correct the entries before he would receive his weekly pay check." This reply is sufficient to call the matter for hearing. The ALJ must be convinced that Respondent had a proper review mechanism in place and that its efforts were sufficient to shift the onus of responsibility elsewhere. Respondent is required to comply with the regulations and this requirement includes knowledge or constructive knowledge of the records.

Therefore it is ordered, That Respondents request for a hearing is granted on the issues of compliance with 49 CFR 391.15; 395.3; and 395.8. However, the request is denied for those violations alleged and as found above, proved, for § 394.9. Respondent is directed to pay the Regional Director $1,300 within 30 days of the date of this Order.

To determine the other questions, I hereby appoint an Administrative Law Judge in accordance with 49 CFR 386.54(a)(1985), to be designated by the Chief Administrative Law Judge of the Department of Transportation as the Presiding Judge. The Judge appointed is authorized to perform those duties specified in 49 CFR 386.54(b)(1985).

Dated: December 14, 1989.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of A.T. Pinto, Inc.

[Docket No. R3–90–006]

Final Order

This matter comes before me upon request of the Regional Director, Region 3, for a Final Order finding the facts to be as alleged in a Notice of Claim dated October 16, 1989.

Having reviewed the Motion and supporting documents appended thereto, I find that no valid request for a hearing has been made. I find that the evidence supports the charges and specifications in the Notice of Claim relating to violations of the Federal Motor Carrier Safety Regulations (FMCSRs).

Therefore, it is ordered, That Respondent is directed to satisfy the penalty assessment by paying to the Regional Director the full amount of $8,100 within 30 days of the date of this Order.

Dated: December 7, 1989.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Rent-A-Stretch, Inc.

[Docket No. 89–196]

Final Order

This matter comes before me upon request of the Respondent for a hearing and Motion in Opposition thereto and for a Final Order submitted by the Regional Director, Office of Motor Carrier Safety, Region 1. At issue are allegations that Respondent has violated the required minimum level of financial responsibility regulation (49 C.F.R. 387.31).

The Petitioner bases these allegations on the results of an audit which established that Respondent has been operating with public liability coverage of only $500,000 rather than the required coverage of $1,500,000 (not $5,000,000 as stated in the Motion for Final Order, see § 387.33). There has been a prior enforcement case against Respondent for previous violations of this section.

In requesting a hearing, Counsel for Respondent avers that Respondent has attempted to comply in good faith with the spirit and intent of the regulations. It is argued that a violation, if any, is the result of the actions of third parties.

This is not the first time that Respondent has been charged with this alleged violation. What good faith attempt to comply has been made? Counsel has not brought forth evidence of a general inability of Respondent and those similarly situated to obtain the requisite coverage. Counsel has failed to identify any material issues in dispute. The facts appear to be: Respondent is operating in interstate commerce without the required level of insurance.

There can be no good faith compliance in this matter. Respondent has the insurance or does not. Respondent operates in interstate commerce or does not. Am I to assume that some conspiracy lurks behind these allegations? Is it an insurance company cabal which is depriving Respondent of its insurance coverage? Counsel's request reads as a script from Godzilla swallows Manhattan.

Respondent must cease operation until such time as proof of compliance is obtained. There is no valid reason proferred for any other determination. There is no good cause in these motions upon which I can send the matter to hearing.

Therefore, it is ordered, That Respondent's request for a hearing is denied and Petitioner's Motion for a Final Order is granted. Respondent is directed to pay to the Regional Director the full amount of $10,000 within 30 days of the date of this Order. The Regional Director is directed to ascertain whether the Respondent has obtained the required levels of insurance. If not, such action shall be taken as necessary to compel Respondent to cease and desist from noncomplying behavior.

Dated: November 29, 1989.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of C & W Enterprises

[Docket No. R3–88–064]

Final Order

This matter comes before me upon request of the Regional Director, Region 3, for a Final Order finding the facts to be as alleged in a Notice of Claim dated August 4, 1988.

Having reviewed the Motion and supporting documents appended thereto, I find that no valid request for a hearing has been made. I find that the evidence supports the charges and specifications in the Notice of Claim relating to violations of the Federal Motor Carrier Safety Regulations (FMCSRs).

Therefore, it is ordered, That Respondent is directed to satisfy the penalty assessment by paying to the Regional Director the full amount of $4,000 within 30 days of the date of this Order.

Dated: November 29, 1989.

Richard P. Landis,

Associate Administrator for Motor Carriers.

In the Matter of Onnie O. Harlow

[Docket No. R6–89–36]

Final Order

This matter comes before me upon request for a hearing and opposition thereto arising out of a Notice of Claim issued by the Regional Director, Office of Motor Carriers, Region 6.

The Notice of Claim, dated June 9, 1989, alleges one documented violation of the Federal Motor Carrier Safety Regulations (FMCSRs), falsifying records of duty status. The Respondent does not deny that the violation occurred. Rather he makes a plea for understanding based upon many years of good driving service and recognition of the practical realities of the industry.

I accept Mr. Harlow's representations as to his driving record. The fact that it is difficult to comply with the regulations in every instance and still make commercial ends meet cannot be denied. The FMCSRs, however, take priority over these arguments as the safety of the traveling public, and indeed, the drivers themselves is involved. Enforcement is not, as Mr. Harlow represents, merely a matter of going by the book. We also have families, we also must pay our bills, we also must meet rules and regulations in our everyday lives, some of which appear onerous. This does not constitute an excuse or rationalization for violation of the rules.

The violations are present; they have been documented. Respondent makes no compelling case for granting a hearing. I would like to assure him that notwithstanding this denial of his request and the imposition of a penalty his arguments have been heard and considered.

Therefore, it is ordered, That Respondent's request for a hearing is hereby denied. Petitioner's request for a Final Order is granted, with the modification the penalty is reduced to $100. This penalty must be paid to the Regional Director within 45 days of the date of this Order.

Dated: November 29, 1989.

Richard P. Landis,

Associate Administrator for Motor Carriers.

Service Bus Company, Inc.

[Docket No. RI–89–05 (Motor Carrier Safety—FHWA)]

Decision of Administrative Law Judge Burton S. Kolko

Served: October 6, 1989.

Complainant Assistant Regional Counsel, Federal Highway Administration (FHWA), charged Respondent Service Bus Company, Inc., a motor carrier, with thirty violations of the Federal Motor Carrier Safety Regulations, 49 CFR part 350 *et seq.*, which are issued under the authority of 49 U.S.C. 3102. The Government's Notice of Claim initiating this proceeding, dated October 3, 1988, cited four counts of failing to maintain driver qualification files for drivers employed, as required by 49 CFR 391.51; twenty-one counts of failing to require drivers to make and submit a record of duty status under 49 CFR 395.8(a); and five counts of requiring or permitting part-time drivers to operate without obtaining from the driver a signed statement regarding duty hours for the previous seven days (49 CFR 395.8(j)(2)). Pursuant to 49 U.S.C. 521(b), FHWA seeks the maximum civil penalty assessment of $500 per count for a total assessment of $15,000.

Respondent denied the charges and requested a hearing. I was appointed to preside over the action under 49 CFR 386.54. The hearing was held May 30, 1989 in New York City, and the parties filed briefs on June 26, 1989. After careful consideration, I find the violations as charged and assess a civil penalty of $15,000.

The Notice of Claim arose from an investigation undertaken by FHWA Safety Investigator Donald Moruzzi. Moruzzi first appeared at Respondent's principal place of business in Yonkers, N.Y. on July 20, 1988 and asked to see certain records to be maintained by interstate motor carriers under federal law. He specifically sought drivers' logs, dispatch sheets, and charter contracts. The President of Service Bus, Salvatore DiPaolo, told him that the company no longer operated in interstate transportation and therefore was not subject to federal requirements (Tr. 22–23). He explained that Service Bus no longer kept such records because it had no need (Tr. 23). Investigator Moruzzi returned the following day and repeated his request. DiPaolo then produced charter contracts involving local transportation but no other documents. He again stated that be no longer kept drivers' logs or dispatch sheets, but this time added that some records might be found at another location used by Service Bus (Tr. 24). Moruzzi was then directed to dispatcher Arnold Jeffries at the second location. Jeffries, who had begun work at the carrier about a week earlier (Tr. 70–71, 73), told Moruzzi that the records and files at the second location were "in a bad disarray" and that nothing could be found (Tr. 73–74).

Shortly thereafter Investigator Moruzzi obtained proof that, contrary to DiPaolo's representations, Service Bus had indeed operated in interstate transportation during relevant time periods. Atlantic City casino records confirmed that Service Bus operated on many occasions between Yonkers, New York and Atlantic City, New Jersey (Tr. 25, 27, 33, 36-37). Confronted with this proof, DiPaolo produced various driver qualification files and records of duty status (drivers' logs) (Tr. 25–26).

A driver qualification file for a regularly employed driver must include a medical examiner's certificate of his physical qualification to drive a motor vehicle; an annual review of his driving record; a copy of his driver's license or certification of road test; an inquiry into the driver's driving and employment records during the previous three years; and the driver's application for employment (49 CFR 391.51; Tr. 27–28). The driver's record of duty status, formerly known as a driver's log, requires a driver to report his duty status for every 24-hour period on a grid divided into four descriptions, (1) Off duty; (2) Sleeper berth; (3) Driving; and (4) On-duty not driving. A regular driver would submit one for each day of the month (See 49 CFR 395.8; Tr. 29–30). Intermittent drivers (as defined in the regulations) must submit a statement showing the total duty time during the previous seven days and the time at which the driver was last released from duty prior to the current assignment (49 CFR 395.8(j)(2); Tr. 30).

Upon reviewing the proffered records of Service Bus, Moruzzi discovered that driver qualification files for four drivers were missing.[1] The company also lacked record-of-duty status files and seven-day statements for various dates between March 7 and July 18, 1988. Moruzzi drew up a checklist of his findings which DiPaolo signed (Exh. 5; Tr. 26, 58).

DiPaolo offered various reasons for the state of his records. He testified that the records had in fact been maintained by Service Bus, but that a former employee charged with maintaining them had left the company in May 1988 coincident with their disappearance (Tr. 43, 58–59, 62). He also claimed that the files may have been located in another office (Tr. 63). DiPaolo also stated that one of the drivers cited for lacking any driver qualification files, Louis Gomez,

[1] A fifth driver alleged to have no qualification file, Joseph Monaco, was not named in the complaint. DiPaolo stated that he was not a driver but a company mechanic who had rented a bus (Exh. 5; Tr. 46).

had actually rented a bus from Service Bus and was therefore not an employee subject to FHWA requirements (Tr. 45–46, 54, 65–66).[2] Additionally, DiPaolo claimed that he required drivers to turn in their logs or else forfeit their pay (Tr. 44–45), implying that it was unlikely that drivers would fail to turn in their records of duty status. This account was confirmed by one of his drivers (Tr. 89–90, 93–94). In sum, DiPaolo maintains that he was in full compliance with all requirements cited by Complainant at all times.[3]

I find the violations as charged. Mr. DiPaolo signed the checklist confirming the findings of Investigator Moruzzi which are the subject of this action. He thereby acknowledged that Moruzzi's findings, with the exception of the status of Gomez, were correct. I need go no further in determining whether the alleged violations which were not contested occurred.

DiPaolo's claims in mitigation of these findings were vague and unsubstantiated, and I do not credit them. He stated that the files may have been stolen, but never offered to show Inspector Moruzzi a police record of such theft (Tr. 36). Nor did he explain why a former employee would make off with these files. Furthermore, while it was also suggested that the files may have been located at a place other than Service Bus' headquarters, dispatcher Jeffries indicated that the records at the second location (assuming they were pertinent) were in disarray and effectively available. The regulations in any event generally require records to be maintained at the motor carrier's "principal place of business" (49 CFR 391.51(f))

Finally, DiPaolo's claim that Louis Gomez was a lessee rather than an employee driver strains credibility. No written lease was executed between Gomez and Service Bus; the company carried the insurance; and the company paid for the gas without reimbursement (Tr. 65–66). Those circumstances are not consistent with a rental agreement. In keeping with the overwhelming weight of the evidence, I find that Gomez was a driver employed by Service Bus and consequently also find the violations alleged with respect to him.[4]

My decision is also grounded in the fact that I have accorded greater weight to the evidence offered by Inspector Moruzzi than to that offered by Mr. DiPaolo. While I see no reason to question Moruzzi's findings and testimony, DiPaolo's credibility suffered by his initial claim that Service Bus made no interstate trips. Only when confronted with written evidence to the contrary did he acknowledge that that claim was untrue. He later stated that the reason he had told Moruzzi that he no longer operated interstate was because he was too "busy" to know where all his buses traveled (Tr. 47; see also Tr. 49). But that claim is of dubious believability in view of the 32 Atlantic City trips undertaken by Service Bus' fleet of only 7–11 buses between March and July 1988 (Exh. 5; Tr. 21, 48). Moreover, DiPaolo acknowledged that some of his drivers operated exclusively to and from Atlantic City (Tr. 60). Against this background, DiPaolo's credibility in this action cannot be accorded the same weight as Morvzzi's.

Under 49 U.S.C. 521(b), Service Bus is liable for a civil penalty not to exceed $500 for each violation. The determination of the amount of any civil penalty is based on

* * * the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history or prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In each case, the assessment shall be calculated to induce further compliance.

49 U.S.C. 521(b)(2)(c). The agency seeks the maximum penalty of $500 per violation. It stated that its determinations take into account the carrier's past record and ability to pay (Tr. 40–41).

Service Bus has been the subject of four previous safety audits since 1979. The 1979 audit cited 52 violations (Exh. 2; Tr. 13–14); a 1980 audit listed 51 (Exh. 3; Tr. 15–16).[5] No sanctions were sought on these two occasions. Rather, written recommendations were made to the carrier which essentially set out a program for ensuring compliance. In each case the agency report containing these recommendations was delivered to and signed by Salvatore DiPaolo as President of Service Bus (Tr. 14, 16). As a result of a third audit conducted in 1982, the agency issued a Notice of Claim against Respondent on June 15, 1983 citing eight counts of failing to retain on file driver's daily logs. The claim resulted in a civil penalty assessment of $4,000 (Exhs. 4, 6; Tr. 16–21).

I agree with the recommendation of agency counsel and hereby set a penalty of $15,000 for the violations. I do not arrive at this figure casually. Service Bus has been cited on three previous occasions for the same or similar problems. The responsible company officials have not changed during this period. Service Bus has been more than suitably apprised of the need to comply. The record shows that it has failed in its responsibilities.

These are not mere record-keeping violations. They affect the safety of the traveling public. Failure to adhere to them undermines the integrity of the Congressionally-mandated enforcement program, public confidence in motor carrier safety, and ultimately the safety of motor carriers themselves. The Motor Carrier Safety Regulations are not to be lightly regarded.

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[2] DiPaolo conditioned his signing of Moruzzi's checklist by this claim. See Exh. 5, p. 2.

[3] Tr. 52–56. Respondent also states in support of his case that on September 13, 1988 he was found in compliance with applicable regulations of the state of New York (Tr. 56, 60, 72, 74–75, 84). This claim, however, is irrelevant to the matter before me. No showing was made regarding the New York requirements, the nature and extent of the inspection there made, or the standards utilized in arriving at that result. Indeed, the New York inspection makes reference to the compliance of the company's *school* buses, another operation and not the subject of this action (Tr. 9–10, 79–80). Moreover, even if New York's program and enforcement standards were identical to FHWA's, the State's September 13 findings have no probative value for the findings made at FHWA's earlier July 20–August 5 inspection. Indeed, I rejected Respondent's proffer of two exhibits reflecting New York State's findings and permitted these documents to accompany the record only as an offer of proof. See Tr. 74–83.

[4] The Notice of Claim alleges that Service Bus did not maintain for Gomez a driver qualification file (violation #4) and failed to require him to make and submit a record of duty status for a July 10, 1988 Yonkers-Atlantic City trip (violation #23). See Notice of Claim dated October 3, 1988.

[5] The 1979 safety audit cited the following violations (the number found follows in parentheses): failure to maintain driver qualification files (two); requiring or permitting drivers to drive more than ten hours (two); failure to require drivers to prepare appropriate daily log (forty); failure to require a driver to forward each day the original of his log (seven); and failure to retain vehicle condition reports (one). The 1980 audit cited a failure to maintain driver qualification files (three); missing items from driver qualification files (four); permitting driver to drive more than ten hours (three); permitting driver to drive after having been on duty 15 hours (six); failure to require driver to make a daily log (ten); failure to require driver to prepare an appropriate daily log (twenty-five). See Tr. 13–16.

The statute requires that the penalty be calculated "to induce further compliance". Against the background I have described, I believe the maximum assessment is the only penalty which will fulfill the statutory goal. Additionally, there has been no showing that the carrier lacks the ability to pay.

Service Bus Company, Inc. is hereby ordered to pay a civil penalty in amount of $15,000 for violating Federal Motor Carrier Safety Regulations 49 CFR 391.51, 395.8(a), and 395.8(j).

This decision is issued pursuant to 49 CFR 386.61. This decision becomes the final decision of the Associate Administrator 45 days after it is served unless a petition or motion for review is filed under 49 CFR 386.62.

Burton S. Kolko,

Administrative Law Judge.

[FR Doc. 90-25081 Filed 10-25-90; 8:45 am]

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federal register

Friday
October 26, 1990

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 23, 91 and 135
Small Airplane Airworthiness Review Program Amendment No. 5; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23, 91, and 135

[Docket No. 25812; Amendment Nos. 23-41, 91-220, 135-38]

RIN 2120-AC14

Small Airplane Airworthiness Review Program Amendment No. 5

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the airworthiness standards for equipment, systems, and installations and establishes airworthiness standards for the installation of electronic display instrument systems in normal, utility, acrobatic, and commuter category airplanes. It also provides alternative airworthiness standards for the instrument configuration for general, air taxi and commercial operations. This amendment updates the airworthiness and operating requirements to reflect advanced technology being incorporated in current designs while maintaining an acceptable level of safety.

EFFECTIVE DATE: November 26, 1990.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Standards Office (ACE-112), Small Airplane Directorate, Aircraft Certification Division, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City Missouri 64106, telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Background

This amendment is based on Notice of Proposed Rulemaking, Notice No. 89-6, published on March 6, 1989 (54 FR 9338). All comments received in response to Notice No. 89-6 have been considered in adopting this amendment.

Related Activity

The FAA announced its Small Airplane Airworthiness Review Program in Notice No. CE-83-1 (48 FR 4290, January 31, 1983) and invited all interested persons to submit proposals for consideration. The goal of the review program was to provide an opportunity for the public to participate in improving, updating, and developing the airwothiness standards applicable to small airplanes, as set forth in part 23 of the Federal Aviation Regulations (FAR). Where applicable, the review program was extended to the new communter category requirements because that commuter category incorporated existing small airplane requirements, as set forth in Amendment 23-34 (52 FR 1806, January 15, 1987).

In Notice No. CE-83-1A (48 FR 26623, June 9, 1983), the FAA extended the period for submission of review proposals, invited by Notice No CE-83-1, to May 3, 1984. Approximately 560 proposals were received in response to Notices No. CE-83-1 and CE-83-1A.

Following receipt of the proposals, the FAA published Notice No. CE-83-1 (49 FR 30053, July 25, 1984) containing the availability of agenda, compilation of proposals, and announcement of the Small Airplane Airworthiness Review Program Conference. That conference was held October 22-26, 1984, in St. Louis, Missouri. A copy of the transcript of all discussions held during the conference is filed in FAA Regulatory Docket No. 23494.

After reviewing the proposals and the public comments received at the conference, the FAA's first related rulemaking action concentrated on updating safety standards related to cabin safety and improved crashworthiness. On December 12, 1986, the FAA published Notice No. 86-19, titled, "Small Airplane Airworthiness Review Notice No. 1" (51 FR 44878). Notice No. 86-19 proposed to upgrade the standards for cabin safety and occupant protection during emergency landing conditions, which included dynamic testing requirements for the seat/restrain systems of small airplanes. The proposals from Notice No. 86-19 were adopted in Amendment 23-36 (53 FR 30802, August 15, 1988).

From the Small Airplane Airworthiness Review Program, Notices No. 2 and 5 were published in the **Federal Register** as Notices No. 89-5 and 89-6, respectively. These two notices, No. 89-5 and 89-6, were published March 6, 1989 (54 FR 9276 and 54 FR 9338). Action on Notice No. 89-5 will be accomplished in a separate final rulemaking document. This final rulemaking action, resulting from Notice No. 89-6, has been prepared with the consideraion of all comments received on that notice.

The proposals to amend §§ 91.205 and 135.159 are the result of the petitions for rulemaking action that the FAA has received and were not specifically discussed at the Small Airplane Airworthiness Review Conference. These proposals are related to the proposals for §§ 23.1309, 23.1311, and 23.1321, therefore, this notice was expanded to include these proposals.

Discussion of Comments

General

Interested persons were invited to participate in the development of these final rules by submitting written data, views, or arguments to the regulatory docket on or before July 5, 1989. Five commenters responded to Notice No. 89-6. Minor technical and editorial changes have been made to the proposed rules based on both relevant comments received and further review by the FAA. Two of these commenters strongly support the adoption of these proposals.

One commenter believes that ongoing rulemaking actions have resulted in a continuing increase in the cost and complexity of certification requirements for general aviation airplanes. This commenter cites, as an example of this increased cost, the "dynamic testing of an airplane to prove it will meet the new certification requirements," and states that "For a small airplane, this test would mean the destruction of a minimum of 3 to 9 fuselages costing a total of from one to two million dollars." Consequently, this commenter expresses support for the primary category rulemaking (54 FR 9738, March 7, 1989) and urges expeditious adoption of that rulemaking action.

Proposals in this rulemaking action respond to changes in design technology that were not envisioned in the current airworthiness standards and provide an acceptable level of safety for that new technology. Any additional airplane costs that may occur from these proposed new requirements are the result of an airplane manufacturer's selection of the technology for a new airplane design. In regard to the commenter's example of dynamic testing requirements that would require the destruction of several fuselages, the FAA has not been able to identify dynamic requirements that would require destruction of a single fuselage. The FAA believes that this comment refers to the recently adopted dynamic seat testing requirements of Amendment 23-36. The new seat design and dynamic testing needed to establish compliance may exceed the cost of the seat design and static test needed to show compliance with older requirements; however, the net benefits to be realized from the reduction in occupant fatalities and injuries are expected to exceed the increase in cost. Finally, this commenter's recommendation on the expeditious adoption of the proposed primary category aircraft rule is beyond the scope of this notice.

Discussion of Comments to Specific Sections of Parts 23, 91, and 135

The following comments and discussion are keyed to like-numbered proposals in Notice No. 89–6.

Proposals 1, 5, 7. These proposals contain the authority citations for parts 23, 91, and 135. No comments were received on these proposals.

Proposal 2. This proposal would retain the existing reliability requirements of current § 23.1309 for airplane equipment, systems, and installations that are not complex and do not perform safety-critical functions. For those cases where the applicant finds it necessary or desirable to include complex, safety-critical systems, this proposal also would provide additional requirements for identifying such equipment, systems, and installations and would define additional requirements needed for their certification. This proposal would permit the approval of more advanced systems having the capability to perform critical functions and whose failure condition would prevent the continued safe flight and landing of the airplane.

Two commenters offer comments on proposed § 23.1309. One of these commenters concurs with the concept of updating the reliability requirements applicable to airplanes not limited to Visual Flight Rules (VFR) flight, but does not concur with this updating for all airplanes. As discussed in Notice No. 89–6, this proposal addresses the systems installed on airplanes and is not limited to the operations approval of the airplane. The airworthiness standards, as adopted in § 23.1309(a), are based on single-fault or fail-safe concepts and experience based on service-proven designs and engineering judgment. These requirements should be used for airplanes whose systems are not complex and do not perform safety-critical functions. Therefore, § 23.1309(a) is structured to allow the use of existing procedures for simple airplane system designs.

If the design of the airplane includes equipment, systems, and installations that perform functions whose failure condition would prevent continued safe flight and landing of the airplane, the occurrence of each failure conditions must be extremely improbable. In addition, on airplanes designed for any type of operation not limited to VFR, the systems whose failure conditions would significantly redue the airplane's capability, or the ability of the crew, to cope with the adverse operating conditions must be improbable. It was recognized that any failure would reduce the airplane's or crew's capability by some degree, but that reduction may not be of the degree that would make operation of the airplane potentially catastrophic. The intent of § 23.1309(b) is to require that systems whose failure would be catastrophic or potentially catastrophic be evaluated using the latest available analysis techniques.

Although future airplane designs limited to VFR operations are not likely to include equipment, systems, and installations whose failure condition would prevent continued safe flight and landing of the airplane, the applicability of this requirement, as discussed above, will provide airworthiness standards if the applicant elects to include such systems in the airplane's design. Therefore, the applicability of this requirement has not been revised as suggested by this commenter.

One commenter suggests that the critical environmental system considered in § 23.1309(c) would be better defined by removing the words "such as" from the proposed paragraph and replacing them with the word "including." The FAA agrees that the suggested wording more accurately identifies the intent of this paragraph, as discussed in this notice. The wording of paragraph (e) of § 23.1309 has been revised accordingly.

This same commenter notes that there are proposals being considered for a new §§ 25.1315 and 15.1317, which deal with the effects of lightning and external high energy radiated electromagnetic fields, and suggests that similar actions be considered for part 23 rules. Although this comment is beyond the scope of the actions proposed in Notice No. 89–6, the FAA recognizes the desirability of having the various airworthiness standards address like requirements in the respective sections and will consider this comment in future rulemaking actions.

Proposal 3. This proposal adds a new § 23.1311 to provide the requirements for the installation of an electronic display instrument system. It provides a separate section to address the airworthiness standards for those indicators. A significant number of electronic display systems have been approved for installation in part 23 airplanes by means of special conditions.

One commenter asks if the wording of proposed § 23.1311(c), concerning electronic display indicators with features that make isolation and independence between powerplant instrument systems impractical, will be supported by an appropriate amendment to require such isolation. As discussed in Notice No. 89–6, the current requirements of part 23 address powerplant instruments that could provide the required data only by using individual instruments. Accordingly, the isolation and independence referred to in § 23.1311(c) are currently required in § 23.903(c). The objective of this regulation is to allow the use of electronic display indicators that will not provide the isolation and independence considered in the current requirements. The FAA is not considering an additional amendment to address this issue.

Proposal 4. This proposal would revise § 23.1321 to provide that flight instruments to be used by any required pilot be located so that only minimal eye and head movement are needed to monitor the airplane's flight path and these instruments. This proposal would also extend the T-arrangement of the flight instruments to all airplanes that are certificated for flight under instrument flight rules (IFR) and would provide for electronic display indicators to be located in this T-arrangement. No comments were received on this proposal and it is adopted as proposed.

Proposal 6. This proposal would revise § 91.205 to permit the operation of all airplanes with the installation of a third attitude instrument system instead of the gyroscopic rate-of-turn indicator, providing that the instrument and installation comply with the requirements of § 121.305(j). [Part 91 was reorganized and its sections renumbered (54 FR 34284, August 18, 1989). The original proposal would have revised § 91.33, but that section is renumbered as § 91.205.] No comments were received on this proposal and it is adopted as proposed.

Proposal 8. This proposal would revise § 135.149 to establish uniformity in installation requirements when a third attitude instrument system is installed. No comments were received on this proposal and it is adopted as proposed.

Proposal 9. This proposal would revise § 135.159 to permit part 135 operation of any airplane, with the installation of a third attitude instrument system instead of a gyroscopic rate-of-turn indicator, that is substantially the same as airplanes, similarly equipped, that are permitted in part 121 operation. No comments were received on this proposal and it is adopted as proposed.

Regulatory Evaluation Summary

Introduction

This section summarizes the full regulatory evaluation prepared by the

FAA that provides more detailed estimates of the economic consequences of this regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, State, and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual increase in consumer costs, a significant adverse effect on the economy of $100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this rule is not "major" as defined in the executive order; therefore, a full regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise document, termed a "regulatory evaluation", that analyzes onl this rule without identifying alternatives. In addition to a summary of the regulatory flexibility determination required by the Regulatory Flexibility Act and an International Trade Impact assessment. If more detailed economic information is desired, the reader may refer to the full regulatory evaluation contained in the docket.

Economic Evaluation

The regulatory evaluation examines the effect of a final rule to amend parts 23, 91, and 135. The amendments to parts 91 and 135 contained in this rule allow the installation of a third attitude indicator instead of the currently required rate-of-turn indicator. Flight instrument systems now being proposed for installation need not include the rate-of-turn function. Allowing an additional attitude indicator with a dedicated power supply relieves the burden on the manufacturer and allows safer operations because of the greater utility of third attitude indicators.

The amendments to Part 91 and 135 impose no cost on the aviation community or other persons, but rather, include provisions for an alternative.

The amendments to part 23 contained in this rule upgrade airworthiness standards to include design requirements for complex systems critical for safety in small airplanes. These upgraded standards, which are based on proposals submitted at the Small Airplane Airworthiness Review Conference in St. Louis, apply only to aircraft for which an application for a type certificate under part 23 is made after the effective date of this rule. The amendments require examination of systems and equipment for their critically to continued safe flight and landing of the airplane, require reliability of such systems based on their critically and set forth standards for installation of instrument systems utilizing electronic display indicators.

Current computer and instrumentation technology has resulted in systems and equipment being available for small airplanes that are novel and unusual relative to what was envisioned and considered when the previous part 23 requirements were promulgated. Therefore, the FAA found it necessary to issue special conditions and expend significant resources to assure adequate airworthiness standards for these systems.

The amendments to part 23 are cost-relieving because they eliminate the need for special conditions processing, which often involves costly and unnecessary delays. In addition, these amendments are optional in the sense that the manufacturers are not being directed to incorporate the newest technology in their future models, but instead are being afforded a set of regulations to observe should they choose the new equipment.

Furthermore, it was concluded that an undetermined measure of safety benefits could be attributed to the three amendments to part 23. These benefits are based on: (1) The reduction in accidents that might otherwise occur under the "single fault" or "fail safe" analysis of failure potential for both complex, safety critical systems and multi-function electronic instrument displays, and (2) the reduction in accidents that could be afforded by the use of these advanced systems and displays.

The gross value of these benefits was estimated to range between $2.14 million and $2.46 million, depending on the assumptions concerning equipage rates and accident reduction effectiveness. However, it should be noted that this estimate measures the isolated effect on the regulatory amendments in and of themselves. Future airplane designs with advanced systems and instrument displays could be evaluated without these amendments through the special conditions process of § 21.16. Therefore, only a portion of the gross safety benefit estimate actually will be realized. The net benefit would be determined by the extent to which these amendments, as compared to the special conditions procedures, expedite the development of airplanes that employ advanced systems and instrument displays and improve the analysis of their safety and reliability.

International Trade Impact Analysis

The provisions of this rule will have little or no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the United States. In the United States, foreign manufacturers would have to meet U.S. requirements, and, thus, they would gain no competitive advantage. In foreign countries, U.S. manufacturers would not be bound by part 23 requirements and could, therefore, implement the provisions of the rule solely on the basis of competitive considerations.

Regulatory Flexibility Determination

The FAA has determined that the rule changes will not have a significant economic impact on a substantial number of small entities. The FAA's criteria for a small airplane manufacturer is one with fewer than 75 employees. A substantial number is a number that is not fewer than 11 and that is more than one-third of the small entities subject to the rule.

A review of domestic general aviation manufacturing companies indicates that only two companies meet the size threshold of 75 employees or fewer. Therefore, the amendments to parts 23, 91, and 135 will not affect a substantial number of small entities.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

This document amends the airworthiness standards for complex, safety-related critical systems and the installation of electronic display systems. These standards provide design options to the manufacturer that are not available under existing regulations. This document concerns rules that do not impose a burden, but merely afford an alternative, and they will not result in an annual increase in consumer costs or have an adverse

effect on the economy. The FAA has determined that this amendment is not major as defined in Executive Order 12291. For the same reason, this amendment is not considered to be significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since there are no small entities affected by this rulemaking, it is certified, under the criteria of the Regulatory Flexibility Act, that this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities. In addition, these final rules will have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States. A copy of the regulatory evaluation prepared for this project may be examined in the Rules Docket or obtained from the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects

14 CFR Parts 23, 91, and 135

Aircraft, Air transportation, Aviation safety, Safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 23, 91, and 135 of the Federal Aviation Regulations (14 CFR parts 23, 91 and 135) as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC AND COMMUTER CATEGORY AIRPLANES

1. The authority citation for part 23 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g).

2. Section 23.1309 is revised to read as follows:

§ 23.1309 Equipment, systems, and installations.

(a) Each item of equipment, each system, and each installation:

(1) When performing its intended function, may not adversely affect the response, operation, or accuracy of any—

(i) Equipment essential to safe operation; or

(ii) Other equipment unless there is a means to inform the pilot of the effect.

(2) In a single-engine airplane, must be designed to minimize hazards to the airplane in the event of a probable malfunction or failure

(3) In a multiengine airplane, must be designed to prevent hazards to the airplane in the event of a probable malfunction or failure.

(b) The design of each item of equipment, each system, and each installation must be examined separately and in relationship to other airplane systems and installations to determine if the airplane is dependent upon its function for continued safe flight and landing and, for airplanes not limited to VFR conditions, if failure of a system would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each item of equipment, each system, and each installation identified by this examination as one upon which the airplane is dependent for proper functioning to ensure continued safe flight and landing, or whose failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, must be designed to comply with the following additional requirements:

(1) It must perform its intended function under any foreseeable operating condition.

(2) When systems and associated components are considered separately and in relation to other systems—

(i) The occurrence of any failure condition that would prevent the continued safe flight and landing of the airplane must be extremely improbable; and

(ii) The occurrence of any other failure condition that would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions must be improbable.

(3) Warning information must be provided to alert the crew to unsafe system operating conditions and to enable them to make appropriate corrective action. Systems, controls, and associated monitoring and warning means must be designed to minimize crew errors that could create additional hazards.

(4) Compliance with the requirements of paragraph (b)(2) of this section may be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider—

(i) Possible modes of failure, including malfunctions and damage from external sources:

(ii) The probability of multiple failures, and the probability of undetected faults.;

(iii) The resulting effects on the airplane and occupants, considering the stage of flight and operating conditions; and

(iv) The crew warning cues, corrective action required, and the crew's capability of determining faults.

(c) Each item of equipment, each system, and each installation whose functioning is required by this chapter and that requires a power supply is an "essential load" on the power supply. The power sources and the system must be able to supply the following power loads in probable operating combinations and for probable durations:

(1) Loads connected to the power distribution system with the svstem functioning normally.

(2) Essential loads after failure of—

(i) Any one engine on two-engine airplanes; or

(ii) Any two engines on an airplane with three or more engines; or

(iii) Any power converter or energy storage device.

(3) Essential loads for which an alternate source of power is required, as applicable, by the operating rules of this chapter, after any failure or malfunction in any one power supply system, distribution system, or other utilization system.

(d) In detemining compliance with paragraph (c)(2) of this section, the power loads may be assumed to be reduced under a monitoring procedure consistent with safety in the kinds of operations authorized. Loads not required in controlled flight need not be considered for the two-engine-inoperative condition on airplanes with three or more engines.

(e) In showing compliance with this section with regard to the electrical power system and to equipment design and installation, critical environmental and atmospheric conditions, including radio frequency energy and the effects (both direct and indirect) of lightning strikes, must be considered. For electrical generation, distribution, and utilization equipment required by or used in complying with this chapter, the ability to provide continuous, safe service under forseeable environmental conditions may be shown by environmental tests, design analysis, or reference to previous comparable service experience on other airplanes.

(f) As used in this section, "system" refers to all pneumatic systems, fluid systems, electrical systems, mechanical systems, and powerplant systems included in the airplane design, except for the following:

(1) Powerplant systems provided as part of the certificated engine.

(2) The flight structure (such a wing, empennage, control surfaces and their systems, the fuselage, engine mounting, and landing gear and their related primary attachments) whose requirements are specific in subparts C and D of this part.

(3) A new §23.1311 is added under the heading "instruments: Installation" to read as follows:

§ 23.1311 Electronic display instrument systems.

(a) Electonic display indicator requirements in this section are independent to each pilot station required by the airworthiness standards or by the applicable operating rules for each airplane that is to be approved for operation in IFR conditions.

(b) Electronic display indicators required by § 23.1301(a), (b), and (c) must be independent of the airplane's electrical power system.

(c) Electronic display indicators, including those with features that make isolation and independence between powerplant instrument systems impractical must—

(1) Be easily legible under all lighting conditions encountered in the cockpit, including direct sunlight, considering the expected electronic display brightness level at the end of an electronic display indicator's useful life. Specific limitations on display system useful life must be addressed in the Instructions for Continued Airworthiness requirements of § 23.1529;

(2) Not inhibit the primary display of attitude, airspeed, altitude, or powerplant parameters needed by any pilot to set power within established limitations, in any normal mode of operation;

(3) Not inhibit the primary display of engine parameters needed by any pilot to properly set or monitor powerplant limitations during the engine starting mode of operation;

(4) Have independent secondary attitude and rate-of-turn instruments that comply with § 23.1321(a) if the primary electronic display instrument system for a pilot presents this information. Instrument displays that are located in accordance with § 23.1321(d) are considered the primary displays. A rate-of-turn instrument is not required if a third attitude instrument system is installed in accordance with the instrument requirements prescribed in § 121.305(j) of this chapter.

(5) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display indicators; and

(6) Incorporate visual displays of instrument markings, required by §§ 23.1541 through 23.1553, or visual displays that alert the pilot to abnormal operational values or approaches to established limitation values, for each parameter required to be displayed by this part.

(d) The electronic display indicators, including their systems and installations, and considering other airplane systems, must be designed so that one display of information essential for continued safe flight and landing will remain available to the crew, without need for immediate action by any pilot for continued safe operation, after any single failure or probable combination of failures.

(e) As used in this section, "instrument" includes devices that are physically contained in one unit, and devices that are composed of two or more physically separate units or components connected together (such as a remote indicating gyroscopic direction indicator that includes a magnetic sensing element, a gyroscopic unit, an amplifier, and an indicator connected together). As used in this section, "primary" display refers to the display of a parameter that is located in the instrument panel such that the pilot looks at it first when wanting to view that parameter.

4. Section 23.1321 is amended by removing the word "and" at the end of paragraph (d)(3); by removing the period at the end of paragraph (d)(4) and replacing it with "; and"; by revising paragraphs (a) and (b) introductory text and by adding a new paragraph (d)(5) to read as follows:

§ 23.1321 Arrangement and visibility.

(a) Each flight, navigation, and powerplant instrument for use by any required pilot during takeoff, initial climb, final approach, and landing must be located so that any pilot seated at the controls can monitor the airplane's flight path and these instruments with minimum head and eye movement. The powerplant instruments for these flight conditions are those needed to set power within powerplant limitations.

* * * * *

(d) For each airplane certificated for flight under instrument flight rules or of more than 6,000 pounds maximum weight, the flight instruments required by § 23.1303, and, as applicable, by the operating rules of this chapter, must be grouped on the instrument panel and centered as nearly as practicable about the vertical plane of each required pilot's forward vision. In addition:

* * * * *

(5) Electronic display indicators may be used for compliance with paragraphs (d)(1) through (d)(4) of this section when such displays comply with requirements in § 23.1311.

PART 91—GENERAL OPERATING AND FLIGHT RULES

5. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g).

§ 91.205 [Amended]

6. Section 91.205(d)(3)(i), is amended by removing the word "Large", by capitalizing the following word to read "Airplanes", and by adding the words "the instrument requirements prescribed in" after the words "in accordance with".

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

7. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g).

8. Section 135.149 is amended by revising paragraph (c) to read as follows:

§ 135.149 Equipment requirements: General.

* * * * *

(c) For turbojet airplanes, in addition to two gyroscopic bank-and-pitch indicators (artificial horizons) for use at the pilot stations, a third indicator that is installed in accordance with the instrument requirements prescribed in § 121.305(j) of this chapter.

* * * * *

9. Section 135.159 is amended by redesignating paragraphs (a)(1) and (a)(2) as (a)(2) and (a)(3), respectively; and by adding a new paragraph (a)(1) to read as follows:

§ 135.159 Equipment requirements: Carrying passengers under VFR at night or under VFR over-the-top conditions.

* * * * *

(a) * * *

(1) Airplanes with a third attitude

instrument system usable through flight attitudes of 360 degrees of pitch-and-roll and installed in accordance with the instrument requirements prescribed in § 121.305(j) of this chapter.

* * * * *

Issued in Washington, DC on October 22, 1990.

James B. Busey,

Administrator.

[FR Doc. 90–25343 Filed 10–25–90; 8:45 am]

BILLING CODE 4910–13–M

federal register

Friday
October 26, 1990

Part IV

The President

Presidential

Federal Register
Vol. 55, No. 208
Friday, October 26, 1990

Presidential Documents

Title 3—

The President

Proclamation 6214 of October 24, 1990

World Population Awareness Week, 1990

By the President of the United States of America

A Proclamation

If current projections prove accurate, the present global population of more than 5 billion will likely double by the year 2025. It may reach 14 billion by the end of the next century. In many areas of the world, particularly in less developed countries, populations are increasing without concomitant economic growth. In other, more developed nations, however, birthrates are so low that populations are not replacing themselves. The implications of both trends merit careful study and consideration—as experience has clearly shown us, there is a significant relationship between demographic change, economic development, the use of resources, and environmental management.

The United States has long recognized that population growth, in and of itself, is a neutral phenomenon. As we noted during the 1984 International Conference on Population, because human beings are producers as well as consumers, population growth may be an asset or a liability depending on such factors as government economic policies, agricultural practices, and a nation's ability to put men and women to work. Demographic change can become problematic when a nation fails to anticipate or to accommodate growth. Increases in population can pose difficulties when the creation of housing and health facilities does not keep pace or when valuable resources such as arable land, forests, and water are used without regard to future needs. Population growth may also be viewed as a threat in countries where centralized economic planning and government price controls eliminate incentives for farmers and other workers to produce.

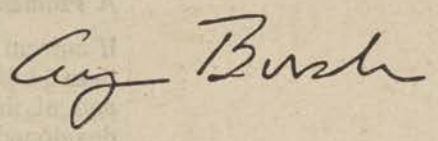
Many governments, private organizations, and concerned individuals around the world have been studying population trends and working to meet the challenges and opportunities those trends create. Over the years, the United States has been a leader in efforts to focus attention on population issues; to promote international cooperation; and to develop and implement population programs that are consistent with individual dignity and human rights. For example, in addition to supporting voluntary family planning activities, we have strived to promote environmental conservation and sustainable economic development in poor countries. We have also steadfastly advocated the political and economic freedom that is vital to the advancement of individuals and nations.

The United States believes that population programs must be truly voluntary, that they must not only recognize the rights and responsibilities of individuals and families but also respect their religious and cultural values. When population programs are conducted in accordance with this view, when they affirm and enhance the dignity and potential of the individual, they can and do promote the health of mothers and children, the stability of families, and, subsequently, the strength and well-being of entire nations.

The Congress, by Senate Joint Resolution 158, has designated the week of October 21 through October 27, 1990, as "World Population Awareness Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of October 21 through October 27, 1990, as World Population Awareness Week. I invite all Americans to observe this week with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of October, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.



[FR Doc. 90-25605
Filed 10-25-90; 10:28 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 6215 of October 24, 1990

Eating Disorders Awareness Week, 1990

By the President of the United States of America

A Proclamation

Anorexia nervosa and bulimia, collectively known as eating disorders, are emotional disorders that can lead to serious physical illness and even death. Anorexia nervosa is expressed in deliberate self-starvation, which is manifested in an extreme aversion to food. It is closely related to, and often accompanied by, bulimia, which is marked by binge eating and purging.

Experts who have studied eating disorders estimate that one out of every 100 women between the ages of 12 and 25 suffers from anorexia nervosa, and that one of every seven women in the same age group develops bulimia. However, they also note that nearly 10 percent of all patients referred to eating disorder clinics are men.

Although the causes of anorexia nervosa and bulimia are still unknown, researchers believe that a combination of psychological, environmental, and physiological factors contribute to the development of one or both of these disorders. Treatment for anorexia and bulimia entails a combination of medical care and psychotherapy for the patient, as well as counseling for parents, spouses, and siblings. The patient's participation in a self-help group is an adjunct to medical and psychiatric care.

Advances in our understanding of anorexia nervosa and bulimia have been made possible through the concerted efforts of scientists, physicians, and counselors, as well as victims and their families. Researchers at the National Institute of Mental Health and the National Institutes of Health are working to discover the causes of these disorders and are using a multidisciplinary approach to diagnose and treat them. Private voluntary organizations such as the American Anorexia/Bulimia Association, the National Anorexic Aid Society, and the National Association of Anorexia Nervosa and Associated Disorders offer information regarding treatment centers, hospitals, clinics, and doctors specializing in eating disorders.

To recognize the importance of such efforts and to enhance public awareness of the dangers of eating disorders, the Congress, by House Joint Resolution 214, has designated the week beginning October 22, 1990, as "Eating Disorders Awareness Week" and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week of October 22, 1990, as Eating Disorders Awareness Week. I invite all Americans to join with concerned health care professionals and government officials in observing this week through appropriate programs and activities directed toward the prevention and cure of anorexia nervosa and bulimia.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of October, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 90-25606
Filed 10-25-90; 10:29 am]
Billing code 3195-01-M

Reader Aids

Federal Register

Vol. 55, No. 208

Friday, October 26, 1990

INFORMATION AND ASSISTANCE

FEDERAL REGISTER PAGES AND DATES, OCTOBER

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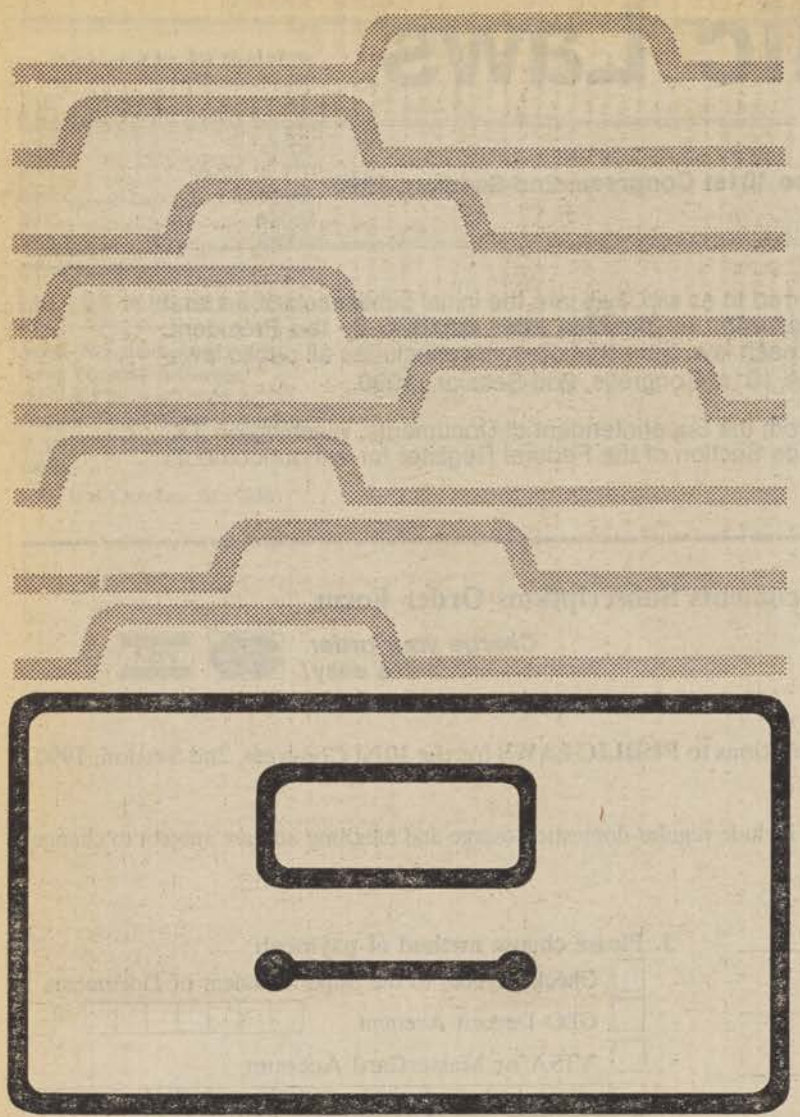

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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1990

The GUIDE and the SUPPLEMENT should be used together. This useful reference tool, compiled from agency regulations, is designed to assist anyone with Federal recordkeeping obligations.

The various abstracts in the GUIDE tell the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

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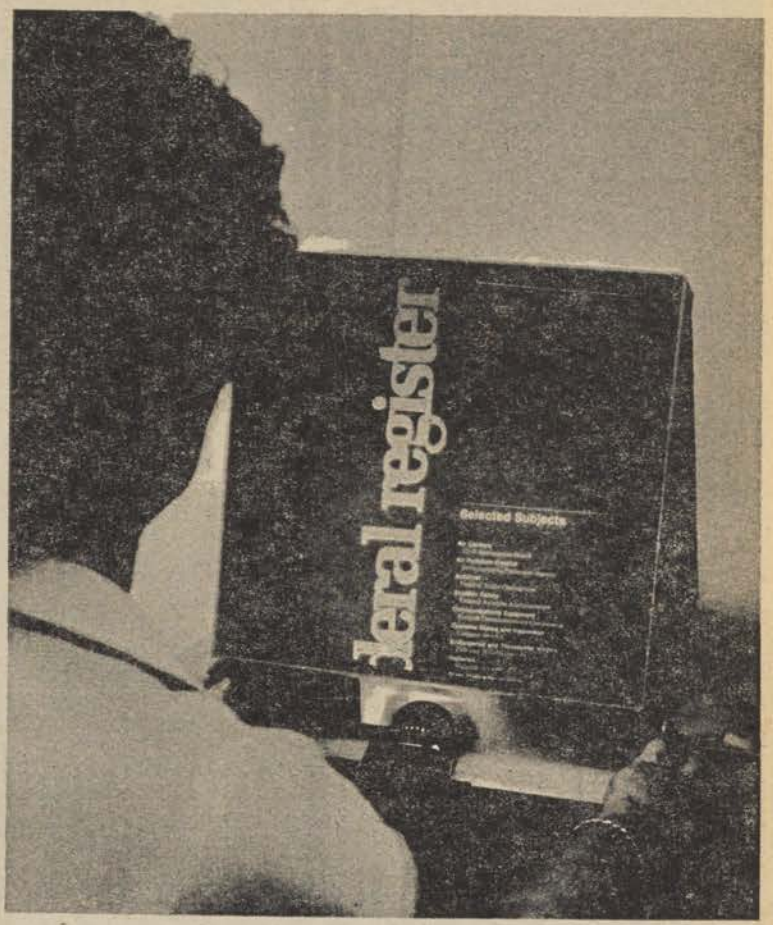

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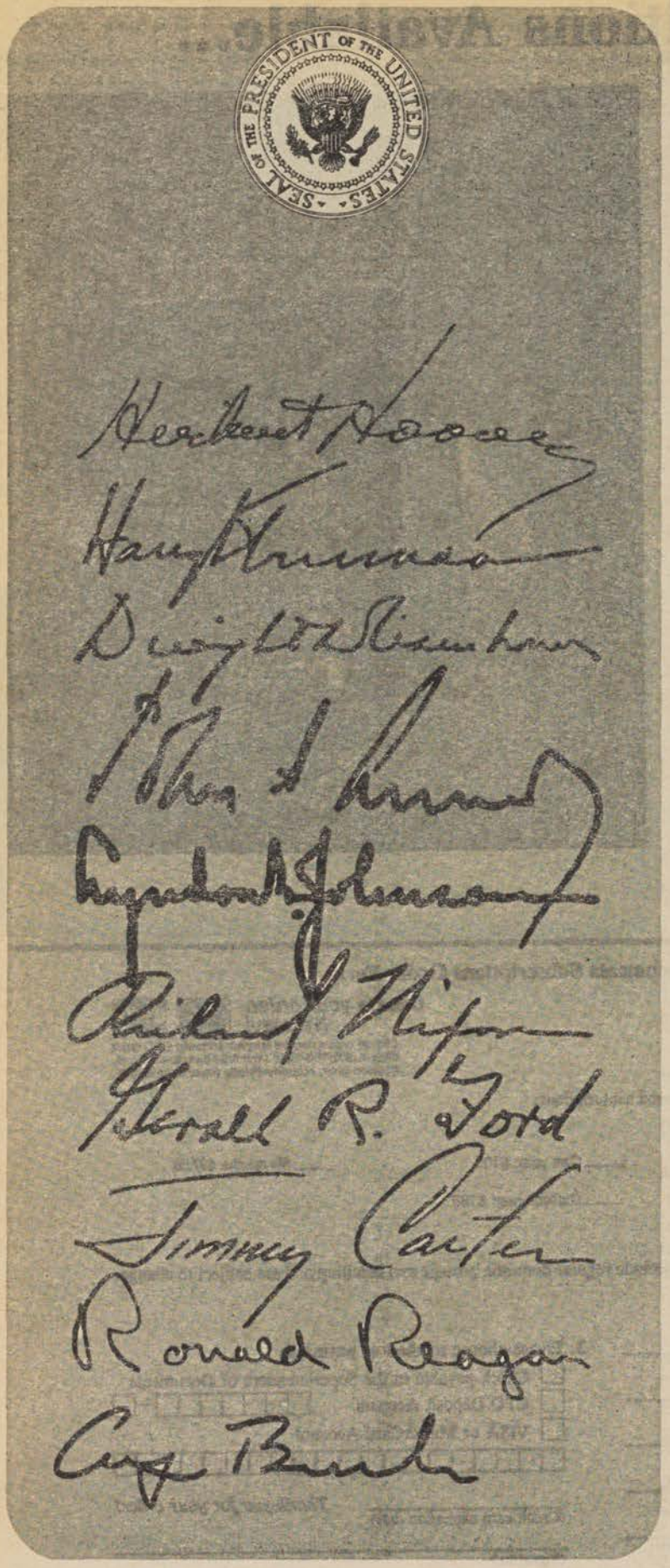

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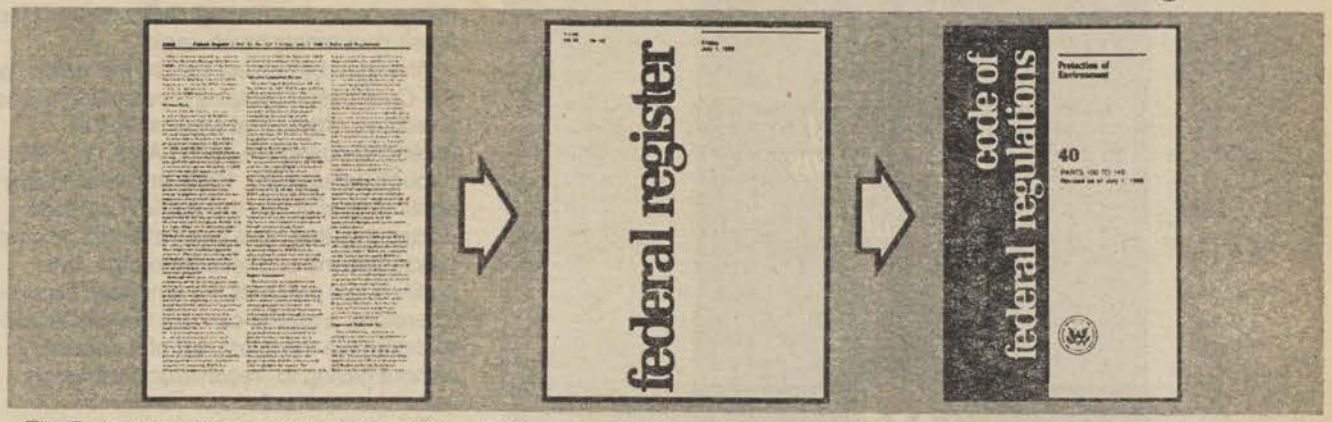

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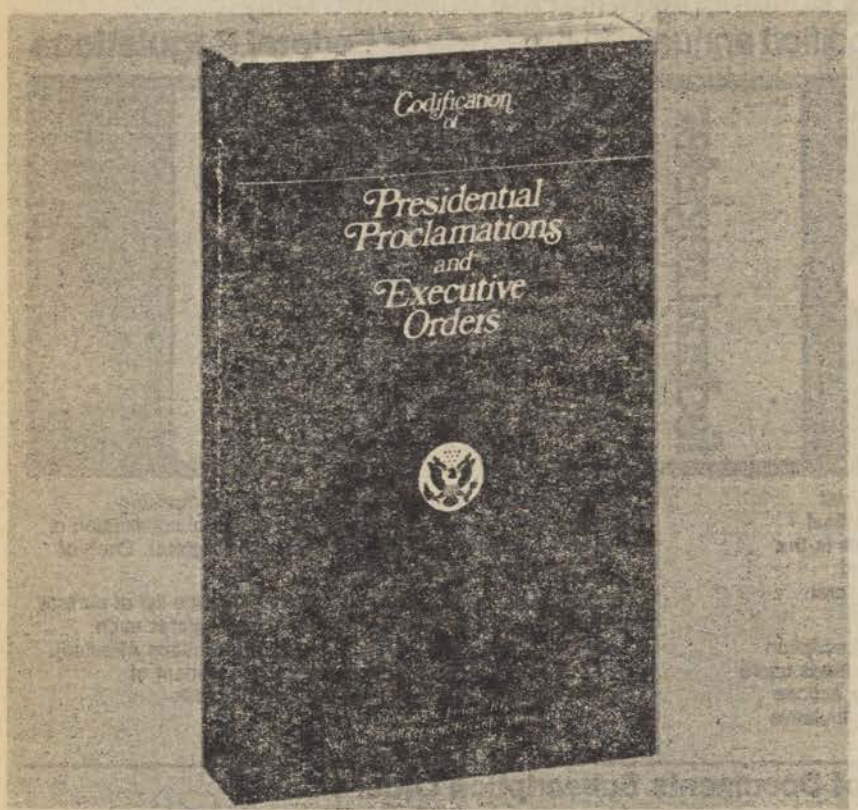

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